VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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PUBLICATION SCHEDULE AND DEADLINES

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

October 2022 through October 2023

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

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Agency Decision

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

Name of Petitioner: Ethan Kaste.

Nature of Petitioner's Request: The petitioner requests that the board amend 18VAC115-20-52 B 10 to allow residents in counseling to use the title Licensed Professional Counselor – Resident (LPC-R).

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Counseling considered the petition at its September 16, 2022, meeting and decided to take no action on the petition. The board believes the current regulatory requirements for resident identification provide necessary clarification for the public.

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

VA.R. Doc. No. PFR22-38; Filed September 17, 2022, 1:07 p.m.

Agency Decision

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

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

Name of Petitioner: James Conner.

Nature of Petitioner's Request: The petitioner requests that individuals be permitted to become registered as qualified mental health providers based solely on experience rather than college or graduate education.

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Counseling considered the petition at its September 16, 2022, meeting and decided to take no action on the petition. The current educational requirements are sufficient for registration of qualified mental health professionals.

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

VA.R. Doc. No. PFR22-35; Filed September 17, 2022, 1:04 p.m.

Agency Decision

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

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

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

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

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Counseling considered the petition at its September 16, 2022, meeting and decided to take no action on the petition. The board will, in the coming months, convene a regulatory advisory panel to consider the issues raised in the petition and others related to the registration of qualified mental health professionals with the intent of issuing a notice of intended regulatory action for all changes needed.

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

VA.R. Doc. No. PFR22-40; Filed September 17, 2022, 1:43 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Initial Agency Notice

Title of Regulation: **24VAC20 - a regulation regarding the award of DMV Select contracts currently does not exist.**

Statutory Authority: § 46.2-203 of the Code of Virginia.

Name of Petitioner: David Adam McKelvey, Crandall & Katt.

Nature of Petitioner's Request: The petitioner requests the Department of Motor Vehicles (DMV) to develop a regulation containing objective criteria regarding the award of DMV Select contracts to non-governmental entities that comply with the Virginia Public Procurement Act.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on October 10, 2022, and on the Virginia

Regulatory Town Hall. Public comment will open on October 10, 2022, and will close on November 8, 2022. DMV will consider the petition and all comments in support or opposition after the close of the public comment period. The agency will issue a written decision within 90 days following the close of the comment period.

Public Comment Deadline: November 8, 2022.

Agency Contact: Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

VA.R. Doc. No. PFR23-02; Filed September 13, 2022, 2:56 p.m.

Initial Agency Notice

Title of Regulation: **24VAC20 - a regulation regarding the faxing of requests for driver transcripts currently does not exist.**

Statutory Authority: § 46.2-203 of the Code of Virginia.

Name of Petitioner: David Adam McKelvey, Crandall & Katt.

Nature of Petitioner's Request: The petitioner requests the Department of Motor Vehicles (DMV) to develop a new regulation requiring DMV employees to fax requests for driver transcript information to other states when the other state will accept faxed requests for driver transcript information.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on October 10, 2022, and on the Virginia Regulatory Town Hall. Public comment will open on October 10, 2022, and will close on November 8, 2022. DMV will consider the petition and all comments in support or opposition after the close of the public comment period. The agency will issue a written decision within 90 days following the close of the comment period.

Public Comment Deadline: November 8, 2022.

Agency Contact: Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

VA.R. Doc. No. PFR23-03; Filed September 13, 2022, 2:57 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-50, New and Modified Stationary Sources**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings to support this decision.

This regulation is necessary for the protection of public health and welfare as they are needed to meet the primary goals of the federal Clean Air Act (CAA): the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), the prevention of significant deterioration of air quality in areas cleaner than the NAAQS, the prevention visibility impairment in Class I areas, and the control of source specific pollutant types.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the ambient air in order to protect public health and welfare. EPA requires that each state submit a state implementation plan (SIP), including any laws and regulations necessary to enforce the plan, which shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

An SIP is the key to the state's air quality programs. The CAA is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards. EPA would have to promulgate and implement an air quality plan for that state. EPA is also by law required to impose sanctions in cases where there is no approved plan or the plan is not being implemented. The sanctions consist of loss of federal funds for highways and other projects or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the CAA and its requirements.

The basic approach to developing an SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards. Of the basic types of measures, 9VAC5-50 addresses stationary source control measures. Stationary source control measures limit emissions primarily from commercial or industrial facilities and operations and include emission limits, control technology requirements, preconstruction permit programs for new industry and expansions, and source-specific control requirements. Stationary source control measures also include area source control measures that are directed at small businesses and consumer activities.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the CAA to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for these regulations is general, not specific, consisting of the CAA's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the CAA and EPA regulations and policy have become much more specific, thereby removing much of state discretion to craft air quality control programs.

Generally, an SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. Therefore, these specific SIP provisions, including implementation of the standards of this regulation and implementation of the compliance, testing, monitoring, and recordkeeping provisions of this regulation that are generally applicable to all new and modified stationary sources in the Commonwealth, are necessary for the protection of public health and welfare.

In contrast to the pollutant-specific focus of the § 110 NAAQS/SIP program, the § 111 New Source Performance Standards (NSPS) program focuses on specific source types. An NSPS facility may emit varying levels of NAAQS pollutants but may also emit pollutants unique to its processes and products. For example, large municipal waste combustors emit sulfur dioxide and nitrogen oxides, which are subject to NAAQS, but also emit metals (such as cadmium and mercury), acid gases (such as hydrogen chloride), and organics (such as dioxin/furan). This focused control of emissions on certain facility types is important for the protection of public health and welfare as it affords targeted controls of pollutants otherwise not covered by a specific standard.

In summary, this regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth, ensuring that owners comply with air pollution emission limits and control technology requirements. The following specific pollutants are being effectively controlled under this regulation:

- Part I and Part II, Articles 1 and 4: Visible emissions, fugitive dust, and fugitive emissions.
- Part I and Part II, Articles 4 and 5: Particulate matter, carbon monoxide, sulfur dioxide, nitrogen oxides, volatile organic compounds, lead, hydrogen sulfide, fluorides, sulfuric acid mist, total reduced sulfur, nonmethane organic compounds; other pollutants depending on process category.
- Part I and Part II, Articles 2 and 4: Odor-causing emissions.

The department has determined that this regulation is clearly written and easily understandable by the individuals and entities affected. The regulation is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in nontechnical language.

This regulation satisfies the provisions of the law and legally binding state and federal requirements and is effective in meeting the regulation's goals; therefore, the regulation is being retained without amendment. This regulation continues to be needed. The regulation provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

The regulation does not overlap, duplicate, or conflict with any state law or other state regulation. The regulation was last reviewed in 2018. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. The regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department has thoroughly examined the regulation and has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and a small business impact review of **9VAC5-70, Air Pollution Episode Prevention**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated September 7, 2022, to support this decision.

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the primary goals of the federal Clean Air Act (CAA): the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by EPA, establish the maximum limits of pollutants that are permitted in the ambient air in order to protect public health and welfare. EPA requires that each state submit a state implementation plan (SIP), including any laws and regulations necessary to enforce the plan, which shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

An SIP is the key to the state's air quality programs. The CAA is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards. EPA would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented. Sanction may consist of loss of federal funds for highways and other projects or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the federal CAA and its requirements.

The basic approach to developing an SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards. There are three basic types of measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures limit emissions primarily from commercial and industrial facilities and operations and include emission limits, control technology requirements, preconstruction permit programs for new industry and expansions, and source-specific control requirements. Stationary source control measures also include area source control measures that are directed at small businesses and consumer activities. Mobile source control measures are directed at tailpipe and other emissions primarily

from motor vehicles. Transportation control measures limit the location and use of motor vehicles.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the CAA to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for this regulation is general, not specific, consisting of the CAA's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the CAA, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, an SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. Therefore, these specific SIP provisions, including implementation of this regulation, are necessary for the protection of public health and welfare.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. It establishes procedures to be taken when an "air pollution episode" occurs as required under 40 CFR Part 51, Subpart H. An air pollution episode is a situation that is declared by responsible authorities when weather or air pollution conditions or both indicate a potential threat to human health. This regulation describes the escalating stages of air conditions and the concurrent control requirements. The purpose of the regulation is to prevent the excessive buildup of air pollutants during air pollution episodes, thereby preventing the occurrence of an emergency due to the effects of the pollutants on human health.

The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in nontechnical language.

This regulation satisfies the provisions of the law and legally binding state and federal requirements and is effective in meeting its goals; therefore, the regulation is being retained without amendment. This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation was last reviewed in 2018. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

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

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **9VAC5-220, Variance for Rocket Motor Test Operations at Aerojet Rocketdyne Inc. Orange County Facility**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 10, 2022, and ends October 31, 2022.

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

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

VIRGINIA WASTE MANAGEMENT BOARD

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, this regulation is undergoing a periodic review and a small business impact review:

9VAC20-90, Solid Waste Management Permit Action Fees and Annual Fees. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 10, 2022, and ends October 31, 2022.

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

Contact Information: Sanjay Thirunagari, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1532, or email sanjay.thirunagari@deq.virginia.gov.

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, this regulation is undergoing a periodic review and a small business impact review: **9VAC20-170, Transportation of Solid and Medical Wastes on State Waters**. The review of this regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 10, 2022, and ends October 31, 2022.

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

Contact Information: Suzanne Taylor, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1533, or email suzanne.taylor@deq.virginia.gov.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing conducted a periodic review and a small business impact review of **18VAC90-19, Regulations Governing the Practice of Nursing**, and determined that this regulation should be amended. The department is publishing its report of findings dated September 13, 2022, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it sets for the requirements for licensure and standards of practice for nursing. The regulation is necessary to continue to renew licenses for registered nurses (RNs) and licensed practical nurses (LPNs) and to issue new licenses for RNs and LPNs, which the General Assembly determined is a necessary component of the provision of health care in the Commonwealth. The regulation is additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary actions against practitioners. The Board of Nursing has reviewed this regulation and determined that it is clearly written and understandable. The board decided to retain the regulation with amendments. Amendments will include elimination of outdated provisions and language and updates to procedures and requirements.

The agency realizes the continued need to license and regulate RNs and LPNs for both public access to basic health care and protection of the public. The agency received no comments regarding the periodic review of this chapter. The regulation is not unnecessarily complex, but does involve, for example, the standard of care for RNs and LPNs, including delegation of nursing tasks. The majority of the regulation, however, solely involves licensing and is not complex at all. There may be some overlap with state statutes or federal law. The agency will review those overlaps and likely eliminate them as it finalizes intended changes. This regulation was created during a reorganization in 2017 and has been amended 12 times since then. The Board of Nursing and the agency do not wait four years for periodic reviews to make regulatory changes as a whole; instead, the health regulatory boards promulgate changes, including those related to technology, economic conditions, and other factors, as needed. The regulation impacts health care practitioners that the General Assembly

requires the board to regulate. They do not impact small businesses. Therefore, there is no economic impact to minimize.

Contact Information: Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, or email jay.douglas@dhp.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Nursing conducted a periodic review and a small business impact review of **18VAC90-21, Medication Administration Training and Immunization Protocol**, and determined that this regulation should be amended. The department is publishing its report of findings dated September 13, 2022, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare because it establishes requirements for medication administration training programs. The regulation is necessary to continue to train individuals for medication administration and administration of adult immunizations, which the General Assembly determined is a necessary component of the provision of health care in the Commonwealth. The regulation is additionally necessary to protect public health, safety, and welfare by providing an accountability method for educational programs for medication administration and immunization administration. The Board of Nursing has reviewed this regulation and determined that it is clearly written and understandable. The board decided to retain the regulation with amendments. Amendments will include elimination of outdated provisions and language and updates to procedures and requirements.

The agency realizes the continued need to approve and regulate educational programs related to the nursing profession for both public access to basic healthcare and protection of the public. The agency received two comments in response to the periodic review of this chapter. Those comments, however, involve concerns with 18VAC90-60. The regulation is not unnecessarily complex. There may be some overlap with state statutes or federal law. The agency will review those overlaps and likely eliminate them as it finalizes intended changes. This chapter was created during a reorganization in 2014 and has been amended once since then. The Board of Nursing and the agency do not wait four years for periodic reviews to make regulatory changes as a whole; instead, the health regulatory boards promulgate changes, including those related to technology, economic conditions, and other factors, as needed. The board will review any economic impact of the regulations on small businesses at the time it suggests amendments. The regulation, however, is minimal prior to any regulatory amendments.

Contact Information: Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, or email jay.douglas@dhp.virginia.gov.

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TITLE 19. PUBLIC SAFETY

VIRGINIA FIRE SERVICES BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Fire Programs conducted a periodic review and a small business impact review of **19VAC15-11, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated September 19, 2022, to support this decision.

The regulation remains the same. The agency has made the decision to retain the regulation as it is without making any changes.

Contact Information: Theresa Hunter, Financial Services Manager I, Department of Fire Programs, 1005 Technology Park Drive, Glen Allen, VA 23059, telephone (804) 249-1958, or email theresa.hunter@vdfp.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BRANCH PILOTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Branch Pilots intends to consider amending **18VAC45-20, Board for Branch Pilots Regulations**. The purpose of the proposed action is to clarify that (i) the board has the authority to deny an initial or renewal license if the applicant performs or attempts to perform any of the applicant's duties while under the influence of marijuana and (ii) the medical review officer shall report when any presence of marijuana is found in addition to the presence of drug or alcohol that may impair the safe discharge for the branch pilot's duties.

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

Statutory Authority: § 54.1-902 of the Code of Virginia.

Public Comment Deadline: November 9, 2022.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email branchpilots@dpor.virginia.gov.

VA.R. Doc. No. R23-7318; Filed September 15, 2022, 4:57 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Commission on the Virginia Alcohol Safety Action Program intends to consider promulgating **24VAC35-80, Alcohol Safety Action Program Regulation**. The purpose of the proposed action is to provide regulations for the statewide Virginia Alcohol Safety Action Program (VASAP) system that reflect current processes, procedures, and organizational framework. The statewide VASAP system is crucial to highway safety throughout the Commonwealth. It is imperative that the local alcohol safety action programs operate efficiently and are managed appropriately to ensure financial solvency and adequate services for citizens of the Commonwealth. The new substantive provisions being considered include local program policy board rules and structure, budgetary processes, privacy and security procedures, case management procedures, personnel requirements, and employee certification. Each of these provisions is instrumental in the efficient operation of the local programs and has impact on highway safety throughout the Commonwealth.

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

Statutory Authority: § 18.2-271.2 of the Code of Virginia.

Public Comment Deadline: November 9, 2022.

Agency Contact: Christopher Morris, Special Programs Coordinator, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email chris.morris@vasap.virginia.gov.

VA.R. Doc. No. R23-7298; Filed September 20, 2022, 7:51 a.m.

TITLE 3. ALCOHOLIC BEVERAGE AND CANNABIS CONTROL

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Final Regulation

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

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-110).**

Statutory Authority: § 4.1-111 of the Code of Virginia.

Effective Date: November 9, 2022.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

Chapters 589 and 590 of the 2022 Acts of Assembly authorize the Board of Directors of the Virginia Alcoholic Beverage Control Authority to issue a mixed beverage casino license that allows for sale and service of alcoholic beverages for on-premises consumption during all hours of operation of the licensee. Therefore, in order to conform regulation to Chapters 589 and 590, the amendment excepts mixed beverage casino licensees from the requirement to have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to the establishment's closing.

3VAC5-50-110. Definitions and qualifications for retail on-premises and on-premises and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. The following definitions shall apply to retail licensees with on-premises consumption privileges and mixed beverage licensees where appropriate:

1. "Bona fide, full-service restaurant" means an established place of business where meals are regularly sold to persons and that has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises.

2. "Counter" means a long, narrow surface with stools or chairs along one side for the patrons, behind which refreshments or meals are prepared and served.

3. "Designated area" means a room or an area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein.

4. "Dining area" means a public room or area in which meals are regularly sold at substantially all hours that alcoholic beverages are offered for sale therein.

5. "Meal" means a selection of foods for one individual, served and eaten especially at one of the customary, regular occasions for taking food during the day, such as breakfast, lunch, or dinner, that consists of at least one main dish of meat, fish, poultry, legumes, nuts, seeds, eggs, or other protein sources, accompanied by vegetable, fruit, grain, or starch products.

6. "Table" means an article of furniture supported by one or more vertical legs or similar supports and having a flat horizontal surface suitable for the service of meals, not immediately adjacent to the area where refreshments or meals are prepared.

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on premises only). A common carrier of passengers for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been issued by the State Corporation Commission, habitually serving food on the boat:

Monthly sales.....$2,000

2. "Restaurant." A bona fide dining establishment with special space and accommodation where, in consideration of

payment, meals with entrees or other foods prepared on the premises are regularly sold:

Monthly sales.....$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals and other food prepared on the premises and lodging are habitually furnished to persons and which has four or more bedrooms:

Monthly sales.....$2,000

In regard to both restaurants and hotels, at least $1,000 of the required monthly sales must be in the form of meals.

4. "Gourmet Oyster House." Any duly licensed establishment, located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring oysters and other seafood products:

Monthly sales of oysters and other seafood…....$1,000

C. Mixed beverage licenses. Mixed beverage restaurant licenses may be granted to persons operating bona fide, full-service restaurants.

1. Service of food in a bona fide, full-service restaurant shall consist of serving the food to the table on plates or appropriate dinnerware, accompanied by appropriate tableware. The board may approve the issuance of a mixed beverage restaurant license to a buffet restaurant if (i) both alcoholic and nonalcoholic beverage service is provided at the table and (ii) actual sales show that the requirements of subdivision D 2 of this section are met.

2. Monthly sales of food prepared on the premises of a mixed beverage restaurant licensee shall not be less than $4,000, of which at least $2,000 shall be in the form of meals.

3. A mixed beverage restaurant licensee must have at least as many seats at tables as at counters.

4. A mixed beverage restaurant licensee shall have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food shall be available in all areas of the licensed premises in which spirits are sold or served. This provision shall not apply to mixed beverage casino licensees.

D. The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

E. Notwithstanding subsections A through D of this section, the board may issue a temporary license for any of the retail operations in subsections A through D of this section. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

F. An outside terrace or patio, the location, equipment, and facilities of which have been approved by the board, may be approved as a "dining area" or as a "designated area" in the discretion of the board.

G. Limited mixed beverage licenses may be granted to persons operating restaurants as defined in § 4.1-100 of the Code of Virginia, provided that food is regularly sold at substantially all hours that alcoholic beverages are offered for sale, and the total monthly food sales of food cooked or prepared on the premises for consumption in dining areas and other designated areas on the premises are not less than $2,000.

VA.R. Doc. No. R23-7319; Filed September 13, 2022, 11:39 a.m.

Final Regulation

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

Title of Regulation: **3VAC5-70. Other Provisions (amending 3VAC5-70-10).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Effective Date: November 9, 2022.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Board of Directors, 7450 Freight Way, Mechanicsville, VA 23116, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

Pursuant to Chapter 201 of the 2022 Acts of Assembly, the amendments increase to three gallons the amount of alcoholic beverages that a person may transport into the Commonwealth.

3VAC5-70-10. Transportation of alcoholic beverages; noncommercial permits; commercial carrier permits; refusal, suspension or revocation of permits; exceptions; out-of-state limitation not affected.

A. The transportation within or through this Commonwealth of alcoholic beverages lawfully purchased within this Commonwealth is prohibited, except upon a permit issued by the board, when in excess of the following limits:

1. Wine and beer. No limitation.

2. Alcoholic beverages other than those described in subdivision 1 of this subsection. Three gallons~~; provided, however, that not more than one gallon thereof shall be in containers containing less than 1/5 of a gallon~~.

~~If any part of the alcoholic beverages being transported is contained in a metric sized container, the three gallon limitation shall be construed to be 12 liters, and not more than four liters shall be in containers smaller than 750 milliliters.~~

The transportation within, into, or through this Commonwealth of alcoholic beverages lawfully purchased outside of this Commonwealth is prohibited, except upon a permit issued by the board, when in excess of the following limits:

Alcoholic beverages, including wine and beer. ~~One gallon (four liters if any part is in a metric sized container)~~ Three gallons.

If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit, which shall accompany the alcoholic beverages at all times to the final destination.

B. Commercial carriers desiring to engage regularly in the transportation of alcoholic beverages within, into, or through this Commonwealth shall, except as hereinafter noted, obtain a transportation permit from the board or otherwise possess acceptable documentation as required by the following provisions.

A transportation permit may be obtained by filing an application in writing upon forms furnished by the board. If satisfied that the proposed transportation is otherwise lawful, the board shall issue a transportation permit. Such permit shall not be transferable and shall authorize the carrier to engage in the regular transportation of alcoholic beverages upon condition that there shall accompany each such transporting vehicle a bill of lading or other memorandum describing the alcoholic beverages being transported and showing the names and addresses of the consignor and consignee, who shall be lawfully entitled to make and to receive the shipment. Such a bill of lading or other memorandum may serve as a transportation permit so long as it is made available for inspection to special agents of the board or any law-enforcement officer upon request.

C. The board may refuse, suspend, or revoke a carrier's transportation permit, including the use of a bill of lading or other memorandum as a transportation permit as provided in subsection B of this section, if it shall have reasonable cause to believe that alcoholic beverages have been illegally transported by such carrier or that such carrier has violated any condition of a permit. Before refusing, suspending, or revoking such permit, the board shall accord the carrier involved the same notice and opportunity to be heard and follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia.

D. There shall be exempt from the requirements of this section:

1. Common carriers by water engaged in transporting lawfully acquired alcoholic beverages for a lawful consignor to a lawful consignee;

2. Persons transporting wine, beer, or cider purchased from the board or a licensee;

3. Persons transporting alcoholic beverages that may be manufactured and sold without a license;

4. A licensee transporting lawfully acquired alcoholic beverages he is authorized to sell in a vehicle owned or leased by the licensee;

5. Persons transporting alcoholic beverages to the board, or to licensees, provided that a bill of lading or a complete and accurate memorandum accompanies the shipment, and provided further, in the case of the licensee, that the merchandise is such as his license entitles him to sell;

6. Persons transporting alcoholic beverages as a part of their official duties as federal, state, or municipal officers or employees; and

7. Persons transporting lawfully acquired alcoholic beverages in a passenger vehicle, other than those alcoholic beverages referred to in subdivisions D 2 and D 3 of this section, provided the same are in the possession of the bona fide owners thereof and that no occupant of the vehicle possesses any alcoholic beverages in excess of the maximum limitations set forth in subsection A of this section.

E. This section shall not be construed to alter the one-gallon (four liters if any part is in a metric-sized container) limitation upon alcoholic beverages that may be brought into the Commonwealth pursuant to § 4.1-310 E of the Code of Virginia.

VA.R. Doc. No. R23-7347; Filed September 13, 2022, 11:36 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Final Regulation

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

Title of Regulation: **6VAC40-40. Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries (amending 6VAC40-40-10, 6VAC40-40-30, 6VAC40-40-40, 6VAC40-40-50).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: November 9, 2022.

Agency Contact: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.jenkins@dfs.virginia.gov.

Background: Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries (6VAC40-40) outlines the requirements that a law-enforcement agency must follow to determine if a DNA sample is required under § 19.2-310.2:1 of the Code of Virginia for an individual arrested for a qualifying arrest for a violent felony or certain burglary offenses. Virginia law prohibits the taking of an additional sample if a DNA sample is already in the data bank for the arrestee. Previously, the booking agency would check the Local Inmate Data System (LIDS), which was developed by the State Compensation Board and accessible through the State Compensation Board's website. The Compensation Board created the LIDS DNA sample tracking system in 2003, which provided an effective solution at the time; however, the access control structure for the LIDS DNA system was outdated. The Department of Forensic Science (DFS) has developed a DNA data bank sample tracking system that captures real-time data on individuals included in the data bank. This new DNA sample tracking system is now utilized by law-enforcement agencies in lieu of LIDS. The DFS DNA sample tracking system also has a pre-log feature that allows for the electronic entry of information about the sample into the system at the time of collection. This creates efficiencies as the information will be pre-populated into the system at DFS when the sample is received and scanned by data bank staff. The new DFS DNA sample tracking system meets Virginia Information Technologies Agency (VITA) security standards while improving efficiency for both DFS and users in the field who access the system. The new system is web-based and will be accessible to user agencies, including law-enforcement agencies, the Department of Corrections, the Department of Juvenile Justice, and the courts, at no cost.

Summary:

Pursuant to Chapters 41 and 42 of the 2022 Acts of Assembly, the amendments replace references to the LIDS with the DNA data bank sample tracking system.

6VAC40-40-10. Definitions.

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

"Arrestee" means a person arrested for a qualifying offense under § 19.2-310.2:1 of the Code of Virginia.

"Buccal sample" means a sample taken by swabbing the cheek inside an arrestee's mouth.

"Buccal sample kit" means a kit specified by the department for the collection of buccal cell samples.

"CCRE" means the Central Criminal Records Exchange operated by the Virginia State Police.

"Clerk" means the clerk of court of any general district, juvenile and domestic relations or circuit court in the Commonwealth, and includes deputy clerks.

"Data bank" means the database of DNA profiles from biological samples maintained by the department for convicted ~~felons~~ offenders and arrestees.

"Department" means the Department of Forensic Science.

"DNA" means deoxyribonucleic acid.

"DNA analysis" means analysis conducted on saliva or tissue samples to obtain a genetic profile of identification characteristics.

"DNA data bank sample tracking system" means an application that can be queried to determine whether an arrestee has a sample in the data bank.

"DNA sample" means a biological sample taken for DNA analysis.

~~"DNA sample tracking application" means an application that can be queried to determine whether an arrestee has a sample in the data bank.~~

"Document control number" means the number that is pre-printed on the fingerprint card (CCRE arrest forms SP179 and SP180) or assigned by Live-Scan.

~~"LIDS" means the Local Inmate Data System administered by the State Compensation Board.~~

"Qualifying offense" means an offense requiring a saliva or tissue sample to be taken upon arrest as described in § 19.2-310.2:1 of the Code of Virginia.

6VAC40-40-30. Qualifying offense warrants.

All warrants for qualifying offenses shall contain the following language: "Take buccal sample if ~~LIDS~~ DNA data bank sample tracking system shows no DNA sample in Data Bank."

Part III
DNA Data Bank Sample Tracking ~~Application~~ System

6VAC40-40-40. Use of ~~LIDS~~ DNA data bank sample tracking system.

An Internet accessible DNA data bank sample tracking ~~application~~ system developed by the ~~State Compensation Board through LIDS~~ department shall be ~~accessible through the State Compensation Board's website at www.scb.virginia.gov. Access to the DNA sample tracking application shall be located under the website's "Restricted Access" section~~ used to determine if a DNA sample already exists in the data bank. ~~User identifications and passwords~~ Access to the system shall be ~~assigned~~ granted by the department to all ~~law enforcement~~ user agencies responsible for taking saliva or tissue samples from arrestees.

6VAC40-40-50. Screening for duplicates.

Prior to taking the saliva or tissue sample, the ~~LIDS~~ DNA data bank sample tracking ~~application, or any such other DNA sample tracking application approved by the department and permitted by the Code of Virginia,~~ system shall be queried to determine if there is a DNA sample already in the data bank for the arrestee. If the DNA data bank sample tracking ~~application~~ system indicates that a sample ~~previously has been taken from the arrestee~~ already exists in the data bank, no additional sample shall be taken. If the DNA data bank sample tracking ~~application~~ system indicates no sample has been taken from the arrestee, a saliva or tissue sample shall be taken in accordance with the procedures outlined in this chapter.

VA.R. Doc. No. R23-7296; Filed September 14, 2022, 8:59 a.m.

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TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

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

Title of Regulation: **8VAC20-23. Licensure Regulations for School Personnel (amending 8VAC20-23-100).**

Statutory Authority: §§ 22.1-16 and 22.1-298 of the Code of Virginia.

Effective Date: November 9, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804)225-2540, or email jim.chapman@doe.virginia.gov.

Summary:

Pursuant to Chapters 545 and 546 of the 2022 Acts of Assembly, the amendments (i) expand licensure reciprocity to spouses of reserve members of the Armed Forces of the United States or members of the Virginia National Guard who have obtained a valid out-of-state license; (ii) require that the applicant-spouse include the military permanent assignment orders along with the application; and (iii) require the Virginia Department of Education to determine and communicate the applicant-spouse's eligibility for licensure by reciprocity within 15 business days of receipt of the complete application process.

8VAC20-23-100. Conditions for licensure for out-of-state candidates by reciprocity.

A. An individual coming into Virginia from any state may qualify for a Virginia teaching license with comparable endorsement areas if the individual (i) has completed a state-approved teacher preparation program through a regionally accredited four-year college or university or (ii) holds a valid out-of-state teaching license (full credential without deficiencies) that shall be in force at the time the application for a Virginia license is made. An individual shall meet licensure requirements set forth in the Code of Virginia. An individual seeking licensure shall establish a file in the Virginia Department of Education by submitting a complete application packet that includes official student transcripts. Unless exempted by the criteria in this chapter, professional teacher's assessment requirements prescribed by the Virginia Board of Education shall be satisfied.

B. An individual coming into Virginia will qualify for a Virginia teaching license with comparable endorsement areas if the individual holds an active national certification from the National Board for Professional Teaching Standards (NBPTS) or a nationally recognized certification program approved by the Virginia Board of Education.

C. Licensure by reciprocity is provided for any spouse of an active duty or reserve member of the Armed Forces of the United States or ~~the Commonwealth~~ a member of the Virginia National Guard who has obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the

Virginia Department of Education. Each such individual shall establish a file in the Virginia Department of Education by submitting a complete application packet, which shall include official student transcripts and an official copy of the military permanent assignment orders of the individual's spouse. No service requirements or licensing assessments shall be required for any such individual. The Virginia Department of Education shall determine and communicate such individual's eligibility for licensure by reciprocity within 15 business days of receipt of the complete application packet.

D. Licensure by reciprocity is provided for individuals who have obtained a valid out-of-state license, with full credentials and without deficiencies, that is in force at the time the application for a Virginia license is received by the Virginia Department of Education. Each such individual shall establish a file in the Virginia Department of Education by submitting a complete application packet, which shall include official student transcripts. No service requirements or licensing assessments shall be required for any such individual.

E. For licensure by reciprocity, applicants may submit third-party employment verification forms.

F. For licensure by reciprocity, the board shall grant special consideration to individuals who have successfully completed a program offered by a provider that is accredited by the Council for the Accreditation of Educator Preparation.

VA.R. Doc. No. R23-7214; Filed August 17, 2022, 10:39 a.m.

Final Regulation

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

Title of Regulation: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-80, 8VAC20-131-150).**

Statutory Authority: § 22.1-16 and 22.1-253.13:3 of the Code of Virginia.

Effective Date: November 9, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

Summary:

Pursuant to Chapter 582 of the 2020 Acts of Assembly, the amendments require the standard school day for students in kindergarten to average at least 5.5 instructional hours and the standard school year to consist of 180 instructional days or 990 hours of instructional time.

8VAC20-131-80. Instructional program in elementary schools.

A. The elementary school shall provide each student a program of instruction that corresponds to the Standards of Learning for English, mathematics, science, and history and social science. In addition, each school shall provide instruction in art, music, and physical education and health and shall require students to participate in a program of physical fitness during the regular school year in accordance with guidelines established by the board. In addition, each school shall provide instruction in career exploration in accordance with the provisions of 8VAC20-131-140.

B. In kindergarten through grade 3, reading, writing, spelling, and mathematics shall be the focus of the instructional program. Schools shall maintain an early skills and knowledge achievement record in reading and mathematics for each student in grades kindergarten through 3 to monitor student progress and to promote successful achievement on the third grade SOL tests. This record shall be included with the student's records if the student transfers to a new school.

In accordance with the Standards of Quality, local school boards shall implement early identification, diagnosis, and assistance for students with reading and mathematics problems and provide instructional strategies and reading and mathematics practices that benefit the development of reading and mathematics skills for all students.

C. To provide students with sufficient opportunity to learn, local school divisions shall provide a minimum of 680 hours of the required 990 hours of instructional time to students in elementary school in the four academic disciplines of English, mathematics, science, and history and social science. ~~Local school divisions shall provide a minimum of 375 hours of the required 540 hours of instructional time to students in half-day kindergarten in the four academic disciplines of English, mathematics, science, and history and social science.~~

Students who are not successfully progressing in early reading proficiency or who are unable to read with comprehension the materials used for instruction shall receive additional instructional time in reading, which may include summer school.

In accordance with the Standards of Quality, local school divisions shall provide reading intervention services to students in grades kindergarten through 3 who demonstrate deficiencies based on their individual performance on the SOL reading test or any reading diagnostic test that meets criteria established by the Department of Education. The local school division, in its discretion, shall provide such reading intervention services prior to promoting a student from grade 3 to grade 4.

D. Elementary schools are encouraged to provide instruction in world languages.

8VAC20-131-150. Standard school year and school day.

A. The standard school year shall be 180 instructional days or 990 instructional hours. The standard school day, including passing time for class changes and excluding breaks for meals, shall average a minimum of five and one-half instructional hours for students in grades ~~1~~ kindergarten through 12 ~~and a minimum of three hours for kindergarten~~. Recess may be included in the calculation of required instructional hours for elementary school, provided that recess does not exceed 15% of the required instructional hours.

B. All students in grades ~~1~~ kindergarten through 12 shall maintain a full day schedule of classes (5-1/2 hours), unless a waiver is granted in accordance with policies defined by the local school board.

VA.R. Doc. No. R23-7118; Filed August 18, 2022, 8:03 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors, and (ii) with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-145. Regulations for Control of Greenhouse Gases (amending 9VAC5-145-100, 9VAC5-145-110).**

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

Effective Date: November 9, 2022.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments (i) correct a date in the definition of "new" and (ii) pursuant to Item 379 D of Chapter 2 of the 2022 Acts of Assembly, Special Session I, modify the prohibition of certain hydrofluorocarbons to exempt manufacturing processes of aviation and aerospace businesses located in Virginia.

9VAC5-145-100. Applicability, prohibitions, and exemptions.

A. The sale, lease, rent, installation, or entry into commerce in the Commonwealth of Virginia by any person of any products or equipment that use or will use hydrofluorocarbons for the applications and end-uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017, is prohibited after the effective date specified in 9VAC5-145-120.

B. Except where an existing system is retrofitted, nothing in this chapter requires a person that acquired prior to the effective date of the restrictions specified in 9VAC5-145-120, a product or equipment containing a substance prohibited under this chapter, to cease use of that product or equipment.

C. The prohibitions of this chapter do not apply to products or equipment in specific applications and end-uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017, that were manufactured prior to the effective date of the restrictions specified in 9VAC5-145-120.

D. Notwithstanding subsection A of this section, the uses of hydrofluorocarbons specified in subdivisions 1 ~~and~~, 2, and 3 of this subsection are exempt from the prohibitions for the applications and end-uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017.

1. This chapter does not restrict the use of hydrofluorocarbons in the manufacturing process by extruded polystyrene boardstock and billet manufacturers located in the Commonwealth of Virginia to produce products for sale and distribution outside of the Commonwealth, as long as the manufacturer and the distributors of that product can demonstrate (i) that the extruded polystyrene boardstock or billet product is intended for distribution and sale, lease, rental, installation, or entry into commerce outside of the Commonwealth of Virginia and (ii) that the manufacturer and distributors have taken reasonable precautions to assure that the extruded polystyrene boardstock or billet product is not distributed within the Commonwealth for sale, lease, rental, installation, or entry into commerce. This exemption does not apply to extruded polystyrene boardstock or billet products that are sold, leased, rented, installed, or otherwise entered into commerce by any person to retail outlets within the Commonwealth. This exemption shall expire on the date specified in 9VAC5-145-130 B.

2. This chapter does not restrict the use of hydrofluorocarbons in the manufacturing process by aviation and aerospace businesses located in Virginia to produce products for sale and distribution.

3. This chapter does not restrict the management or use of a regulated substance for which the Administrator of the U. S. Environmental Protection Agency has provided a mandatory allocation of allowances pursuant to Section 103 (e)(4)(B)(iv)(I) of the American Innovation and Manufacturing Act of 2020 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (H.R. 133 (116th)) for the exclusive use in applications solely for:

a. A propellant in metered dose inhalers;

b. Defense sprays;

c. Structural composite preformed polyurethane foam for marine use and trailer use;

d. The etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector;

e. Mission-critical military end-uses, such as armored vehicle engine and shipyard fire suppression systems and systems used in deployable and expeditionary applications; and

f. Onboard aerospace fire suppression.

~~3.~~ 4. The exemption in subdivision 2 of this subsection shall expire on December 28, 2025, or in the event the Administrator of the U.S. Environmental Protection Agency has extended providing the allocation of allowances for certain essential uses pursuant to Section 103 (e)(4)(B)(v)(II) of the American Innovation and Manufacturing Act of 2020 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (H.R. 133 (116th)) to the date that extension ends, whichever is later.

E. The provisions of this chapter apply throughout the Commonwealth of Virginia.

9VAC5-145-110. Definitions.

A. For the purpose of applying this chapter and the prohibitions on hydrofluorocarbons for the applications and end-uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this chapter, all terms not defined in this section shall have the meanings given them in 9VAC5-10, General Definitions, unless otherwise required by context.

C. Terms defined.

"Aerosol propellant" means a liquefied or compressed gas, used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

"Air conditioning equipment" means chillers, both centrifugal chillers and positive displacement chillers, intended for comfort cooling of occupied spaces.

"Application" means a specific use within a major industrial sector end-use.

"Bunstock" means a large solid block-like structure formed during the production of polyurethane, polyisocyanurate, phenolic, or polystyrene insulation.

"Capital cost" means an expense incurred in the production of goods or in rendering services, including the cost of engineering, purchase, and installation of components or systems, and instrumentation; and contractor and construction fees.

"Centrifugal chiller" means air conditioning equipment that utilizes a centrifugal compressor in a vapor-compression refrigeration cycle typically used for commercial comfort air conditioning, but not for cooling for industrial process cooling and refrigeration.

"Class I substance" means any ozone-depleting compound defined in the Clean Air Act, 42 USC § 7671(3).

"Class II substance" means any ozone-depleting compound defined in the Clean Air Act, 42 USC § 7671(4).

"Cold storage warehouse" means a cooled facility designed to store meat, produce, dairy products, and other products delivered to other locations for sale to the ultimate consumer.

"Component" means a part of a refrigeration system, including condensing units, compressors, condensers, evaporators, and receivers, and all of its connections and subassemblies, without which the refrigeration system will not properly function or will be subject to failures.

"Cumulatively replaced" means the addition of or change in multiple components within a three-year period.

"Effective date" means the date after which new or retrofit equipment or products are prohibited, where applicable.

"End-use" means processes or classes of specific applications within industry sectors listed in Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017.

"Flexible polyurethane" means a nonrigid synthetic foam containing polymers created by the reaction of isocyanate and polyol, including that used in furniture, bedding, and chair cushions.

"Foam" means a product with a cellular structure formed via a foaming process in a variety of materials that undergo hardening via a chemical reaction or phase transition.

"Foam blowing agent" means substance that functions as a source of gas to generate bubbles or cells in the mixture during the formation of foam.

"Foam system" means a multipart liquid material that expands when mixed to form a solid or flexible substance in which thin films of material separate pockets of gas.

"Greenhouse gases" means, for the purposes of this chapter, the aggregate group of the following gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Household refrigerators and freezers" means refrigerators, refrigerator-freezers, freezers, and miscellaneous household refrigeration appliances intended for residential use. For the purposes of this chapter, the definition of household refrigerators and freezers does not include household refrigerators and freezers - compact or household refrigerators and freezers - built-in.

"Household refrigerators and freezers - built-in" means refrigerators, refrigerator-freezers, and freezers intended for residential use with 7.75 cubic feet or greater total volume and 24 inches or less depth not including doors, handles, and custom front panels; with sides that are not finished and not designed to be visible after installation; and designed, intended, and marketed exclusively to be installed totally encased by cabinetry or panels that are attached during installation and securely fastened to adjacent cabinetry, walls, or floor and equipped with an integral factory-finished face or to accept a custom front panel.

"Household refrigerators and freezers - compact" means refrigerators, refrigerator-freezers, and freezers intended for residential use with a total refrigerated volume of less than 7.75 cubic feet (220 liters).

"Hydrofluorocarbon" or "HFC" means a class of greenhouse gases that are saturated organic compounds containing hydrogen, fluorine, and carbon.

"Integral skin polyurethane" means a synthetic self-skinning foam containing polyurethane polymers formed by the reaction of an isocyanate and a polyol, including those used in car steering wheels and dashboards.

"Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces any product that contains or uses hydrofluorocarbons or is an importer or domestic distributor of such a product.

"Metered dose inhaler" or "MDI" means a device that delivers a measured amount of medication as a mist that a patient can inhale, typically used for bronchodilation to treat symptoms of asthma, chronic obstructive pulmonary disease (COPD), chronic bronchitis, emphysema, and other respiratory illnesses. A MDI consists of a pressurized canister of medication in a case with a mouthpiece.

"Mixture" means a blend of two or more compounds.

"New" means:

1. Products or equipment that are manufactured after ~~June 1, 2021~~ the effective date of the prohibitions in Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017, or January 1, 2022, for dates before November 9, 2022;

2. Products or equipment that are first installed for an intended purpose with new or used components;

3. Products or equipment that are expanded by the addition of components to increase system capacity after ~~June 1, 2021~~ November 9, 2022; or

4. Products or equipment replaced or cumulatively replaced such that the cumulative capital cost after ~~June 1, 2021~~ November 9, 2022, of replacement exceeds 50% of the capital cost of replacing the whole system.

"Phenolic insulation board" means boards, blocks or other shapes fabricated with phenolic foam.

"Polyolefin" means the foam sheets and tubes made of polyolefin, a macromolecule formed by the polymerization of olefin monomer units.

"Polystyrene extruded boardstock and billet" means a foam formed from predominantly styrene monomer and produced on extruding machines in the form of continuous foam slabs that can be cut and shaped into panels and used for roofing, walls, flooring, and pipes.

"Polystyrene extruded sheet" means polystyrene foam, including that used for packaging, buoyancy or floatation and food-service items such as hinged polystyrene containers (for take-out from restaurants), food trays (meat and poultry) plates, bowls, and retail egg containers.

"Polyurethane" means a polymer formed principally by the reaction of an isocyanate and a polyol, including polyisocyanurate (polyiso).

"Positive displacement chiller" means vapor compression cycle chillers that use positive displacement compressors and are typically used for commercial comfort air conditioning. For the purpose of this chapter, positive displacement chiller does not include cooling for industrial process cooling and refrigeration.

"Refrigerant" or "refrigerant gas" means any substance, including blends and mixtures, that is used for heat transfer purposes.

"Refrigerated food processing and dispensing equipment" means retail food refrigeration equipment that is designed to process and dispense food and beverages that are intended for immediate or near-immediate consumption, including chilled and frozen beverages, ice cream, and whipped cream. This end-use excludes water coolers and units designed solely to cool and dispense water.

"Refrigeration equipment" means any stationary device that is designed to contain and use refrigerant gas to establish or maintain colder than ambient temperatures in a confined space, including retail or commercial refrigeration equipment, household refrigerators and freezers, and cold storage warehouses.

"Remote condensing units" means retail refrigeration equipment or units that have a central condensing portion and may consist of one or more compressors, condensers, and receivers assembled into a single unit, which may be located external to the sales area. The condensing portion and often other parts of the system are located outside the space or area cooled by the evaporator. Remote condensing units are commonly installed in convenience stores, specialty shops (e.g., bakeries, butcher shops), supermarkets, restaurants, and other locations where food is stored, served, or sold.

"Residential use" means use by a private individual of a substance, or a product containing the substance, in or around a permanent or temporary household, during recreation, or for any personal use or enjoyment. Use within a household for commercial or medical applications is not residential use, nor is use in automobiles, watercraft, or aircraft.

"Retail food refrigeration" or "commercial refrigeration" means equipment designed to store and display chilled or frozen goods for commercial sale, including stand-alone units, refrigerated food processing and dispensing equipment, remote condensing units, supermarket systems, and vending machines.

"Retrofit" means the replacement of the refrigerant used in refrigeration equipment with a different refrigerant and any related changes to the refrigeration equipment required to maintain its operation and reliability following refrigerant replacement.

"Rigid polyurethane and polyisocyanurate laminated boardstock" means laminated board insulation made with polyurethane or polyisocyanurate foam, including that used for roofing and walls but not including rigid polyurethane appliance foam, rigid polyurethane commercial refrigeration and sandwich panels, rigid polyurethane marine flotation foam, rigid polyurethane spray foam, and rigid polyurethane one-component foam sealants.

"Rigid polyurethane appliance foam" means polyurethane insulation foam in household appliances.

"Rigid polyurethane commercial refrigeration and sandwich panels" means polyurethane foam used to provide insulation in walls and doors, including that used for commercial refrigeration equipment, and used in doors, including garage doors.

"Rigid polyurethane high-pressure two-component spray foam" means a liquid polyurethane foam system sold as two parts (i.e., A-side and B-side) in nonpressurized containers that is field or factory applied in situ using high-pressure proportioning pumps at 800 to 1,600 pounds per square inch (psi) and an application gun to mix and dispense the chemical components.

"Rigid polyurethane low-pressure two-component spray foam" means a liquid polyurethane foam system sold as two parts (i.e., A-side and B-side) in containers that are pressurized to less than 250 psi during manufacture of the system for application without pumps and are typically applied in situ relying upon a liquid blowing agent or gaseous foam blowing agent that also serves as a propellant.

"Rigid polyurethane marine flotation foam" means buoyancy or flotation polyurethane foam used in boat and ship manufacturing for both structural and flotation purposes.

"Rigid polyurethane one-component foam" means a polyurethane foam generally packaged in aerosol cans that is applied in situ using a gaseous foam blowing agent that is also the propellant for the aerosol formulation.

"Rigid polyurethane slabstock and other" means a rigid closed-cell polyurethane foam formed into slabstock insulation for panels and fabricated shapes for pipes and vessels.

"Stand-alone low-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures at or below 32°F (0°C).

"Stand-alone medium-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures above 32°F (0°C).

"Stand-alone unit" means retail refrigerators, freezers, and reach-in coolers (either open or with doors) where all refrigeration components are integrated and the refrigeration circuit may be entirely brazed or welded. These systems are charged with refrigerant at the factory and typically require only an electricity supply to begin operation.

"Substance" means any chemical, product substitute, or alternative manufacturing process, whether new or retrofit, intended for use in the end-uses listed in Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017.

"Substitute" means a chemical, product replacement, or alternative manufacturing process, whether new or retrofit, that is used to perform a function previously performed by a class I substance or class II substance.

"Supermarket systems" means multiplex or centralized retail food refrigeration equipment systems designed to cool or refrigerate, which typically operate with racks of

compressors installed in a machinery room and which includes both direct and indirect systems.

"Use" means any utilization of any substance, including utilization in a manufacturing process or product in the Commonwealth of Virginia, consumption by the end-user in the Commonwealth, or in intermediate applications in the Commonwealth, such as formulation or packaging for other subsequent applications. For the purposes of this chapter, use excludes residential use, but it does not exclude manufacturing for the purpose of residential use.

"Vending machine" means a self-contained unit that dispenses goods that must be kept cold or frozen.

VA.R. Doc. No. R23-7249; Filed September 14, 2022, 10:29 a.m.

STATE WATER CONTROL BOARD

Final Regulation

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

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-10, 9VAC25-31-20, 9VAC25-31-40, 9VAC25-31-50, 9VAC25-31-70, 9VAC25-31-90, 9VAC25-31-100 through 9VAC25-31-140, 9VAC25-31-165 through 9VAC25-31-260, 9VAC25-31-280 through 9VAC25-31-350, 9VAC25-31-370 through 9VAC25-31-410, 9VAC25-31-440, 9VAC25-31-460, 9VAC25-31-485, 9VAC25-31-500, 9VAC25-31-505, 9VAC25-31-510, 9VAC25-31-550, 9VAC25-31-570, 9VAC25-31-620, 9VAC25-31-630, 9VAC25-31-640, 9VAC25-31-660, 9VAC25-31-710, 9VAC25-31-720, 9VAC25-31-910; adding 9VAC25-31-15, 9VAC25-31-315, 9VAC25-31-316, 9VAC25-31-317; repealing 9VAC25-31-920).**

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

Effective Date: November 9, 2022.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 836-2321, FAX (804) 698-4178, or email allan.brockenbrough@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" as necessary, adding permit rationale, adding criteria for requesting and granting a public hearing in a permit action, adding requirements related to controversial permits and controversial permit reporting, removing provisions delegating authority, and updating the definition of "board" and citations to the Code of Virginia.

9VAC25-31-10. Definitions.

"Act" means Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC § 1251 et seq.

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

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) 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 (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

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

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

"Approved POTW Pretreatment Program" or "Program" or "POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII (9VAC25-31-730 et seq.) of this chapter and which has been approved by the director or by the administrator in accordance with 9VAC25-31-830.

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

"Aquaculture project" means a defined managed water area that uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

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

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

"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 9VAC25-31-770 and to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-31-540, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this chapter. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

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

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

"Class I sludge management facility" means any POTW identified under Part VII (9VAC25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9VAC25-31-130 B.

1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

a. 700 mature dairy cows, whether milked or dry;

b. 1,000 veal calves;

c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls and cow/calf pairs;

d. 2,500 swine each weighing 55 pounds or more;

e. 10,000 swine each weighing less than 55 pounds;

f. 500 horses;

g. 10,000 sheep or lambs;

h. 55,000 turkeys;

i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. "Medium CAFO." The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

a. The type and number of animals that it stables or confines falls within any of the following ranges:

(1) 200 to 699 mature dairy cattle, whether milked or dry;

(2) 300 to 999 veal calves;

(3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls and cow/calf pairs;

(4) 750 to 2,499 swine each weighing 55 pounds or more;

(5) 3,000 to 9,999 swine each weighing less than 55 pounds;

(6) 150 to 499 horses;

(7) 3,000 to 9,999 sheep or lambs;

(8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;

(12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

(1) Pollutants are discharged into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility that meets the criteria of this definition, or that the ~~board~~ department designates under 9VAC25-31-140. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

a. Closed ponds which discharge only during periods of excess run-off; or

b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include the Salmonidae family of fish (e.g., trout and salmon).

Warm water aquatic animals include the Ictaluridae, Centrarchidae and Cyprinidae families of fish (e.g., respectively, catfish, sunfish and minnows).

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

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

"Control authority" refers to the POTW if the POTW's pretreatment program submission has been approved in accordance with the requirements of 9VAC25-31-830 or the approval authority if the submission has not been approved.

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-31-315.

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

"CWA" means the Clean Water Act (33 USC § 1251 et seq.) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, Public Law 97-117, and Public Law 100-4.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

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

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

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

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

"Discharge," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means "indirect discharge" as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

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

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

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

"Draft permit" means a document indicating the ~~board's~~ department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

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

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

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

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

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

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

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

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

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

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

"Indirect discharge" means the introduction of pollutants into a POTW from any nondomestic source regulated under § 307(b), (c) or (d) of the CWA and the law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual control strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation that shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial residual" means solid or semisolid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Industrial user" or "user" means a source of indirect discharge.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Interference" means an indirect discharge that, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and (ii) therefore is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of biosolids use or sewage sludge disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II,

more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

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

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, referred to as biosolids, or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this chapter are not considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this chapter, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to an AFO, land under the control of an AFO owner or operator that is owned, rented, or leased to which manure, litter, or process wastewater from the production area may be applied.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback area, where biosolids may be applied.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

"Log sorting facilities" and "log storage facilities" mean facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

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

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors normally associated with biosolids or sewage sludge.

"Man-made" means constructed by man and used for the purpose of transporting wastes.

"Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

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

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law, such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters of the state; (ii) designed or used for collecting or conveying stormwater; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

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

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

"National pretreatment standard," "pretreatment standard," or "standard," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any regulation containing pollutant discharge limits promulgated by EPA in accordance with § 307(b) and (c) of the CWA, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 9VAC25-31-770.

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

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. That is not a new source; and

4. That has never received a finally effective VPDES permit for discharges at that site.

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

"New source," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or

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

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility, or installation is constructed at a site at which no other source is located;

b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:

a. Begun, or caused to begin, as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subdivision.

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

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

"Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass through" means a discharge that exits the POTW into state waters in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the ~~board~~ department to implement the requirements of this chapter. Permit includes a VPDES general permit issued as a regulation adopted by the board. Permit does not include any permit that has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

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

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

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

1. Sewage from vessels; or

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

"POTW treatment plant" means that portion of the POTW that is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited in Part VII of this chapter. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII of this chapter.

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A.

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

"Process wastewater" means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas include feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins, and areas within berms and diversions that separate uncontaminated stormwater. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Proposed permit" means a VPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

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

means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

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

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

"Rock crushing and gravel washing facilities" means facilities that process crushed and broken stone, gravel, and riprap.

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

"Secondary industry category" means any industry category that is not a primary industry category.

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

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which 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.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under § 312 of CWA.

"Sewage sludge" means any solid, semisolid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes solids removed during primary, secondary, or advanced wastewater treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use" or "disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use of biosolids, or disposal of sewage sludge.

"Significant industrial user" or "SIU" means:

1. Except as provided in subdivisions 2 and 3 of this definition:

a. All industrial users subject to categorical pretreatment standards under 9VAC25-31-780 and incorporated by reference in 9VAC25-31-30; and

b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

2. The control authority may determine that an industrial user subject to categorical pretreatment standards under 9VAC25-31-780 and 40 CFR Chapter I, Subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:

a. The industrial user, prior to control authority's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

b. The industrial user annually submits the certification statement required in 9VAC25-31-840 together with any additional information necessary to support the certification statement; and

c. The industrial user never discharges any untreated concentrated wastewater.

3. Upon a finding that an industrial user meeting the criteria in subdivision 1 b of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9VAC25-31-730 et seq.) of this chapter, determine that such industrial user is not a significant industrial user.

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

and sludge that have the potential to be released with stormwater discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of biosolids use or sewage sludge disposal are subject to regulations promulgated pursuant to the law and § 405(d) of the CWA, and is required to obtain a VPDES permit.

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

"Standards for biosolids use or sewage sludge disposal" means the regulations promulgated pursuant to the law and § 405(d) of the CWA that govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use of biosolids or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

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

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

"Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

"Stormwater" discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in this definition, the term includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category 10 of this definition);

2. Facilities classified as Standard Industrial Classifications (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products,

finished products, byproducts, or waste products located on the site of such operations (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner or operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as SIC 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 that have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or that are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA; and

10. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

"Submission" means: (i) a request by a POTW for approval of a pretreatment program to the regional administrator or the director; (ii) a request by POTW to the regional administrator or the director for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals; or (iii) a request to EPA by the director for approval of the Virginia pretreatment program.

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. That are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

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

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

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

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act (42 USC § 6901 et seq.).

"Upset," except when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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

"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.

"Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means ~~a document issued~~ an individual permit issued by the department, or a general permit issued as a regulation adopted by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

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

"Wastewater," when used in Part VII (9VAC25-31-730 et seq.) of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, that are contributed to the POTW.

"Wastewater works operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

"Water Management Division Director" means the director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

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

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

9VAC25-31-15. Permit rationale.

In granting a permit pursuant to this chapter, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same,

and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC25-31-20. Purpose.

This chapter delineates the procedures and requirements to be followed in connection with VPDES permits issued by the ~~board~~ department or a general permit issued as a regulation adopted by the board pursuant to the Clean Water Act and the State Water Control Law.

9VAC25-31-40. Exclusions.

The following discharges do not require VPDES permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.

2. Discharges of dredged or fill material into surface waters which are regulated under § 404 of the CWA.

3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including stormwater run-off from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

6. Return flows from irrigated agriculture.

7. Discharges into a privately owned treatment works, except as the board and department may otherwise require.

9VAC25-31-50. Prohibitions.

A. Except in compliance with a VPDES permit, or another permit, issued by the ~~board~~ department or a general permit issued as a regulation adopted by the board or other entity authorized by the board or department, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

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; or

3. Discharge stormwater into state waters from municipal separate storm sewer systems or land disturbing activities.

B. Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

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

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

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

C. No permit may be issued:

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

2. When the applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;

3. When the regional administrator has objected to issuance of the permit;

4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;

5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;

8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board or department determines permit issuance to be in the public interest; or

b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the law and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The ~~board~~ department may waive the submission of information by the new source or new discharger required by this subdivision if the ~~board~~ department determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the permit under 9VAC25-31-280.

9VAC25-31-70. Continuation of expiring permits.

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

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new permit; and

2. The ~~board~~ department, through no fault of the permittee, does not issue a new permit or the board, through no fault of the permittee, does not issue a new general permit as a regulation adopted by the board with an effective date on or before the expiration date of the previous permit.

B. Permits continued under this section remain fully effective and enforceable.

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

1. Initiate enforcement action based upon the permit which has been continued;

2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

3. Issue a new permit with appropriate conditions; or

4. Take other actions authorized by this chapter.

9VAC25-31-90. Guidance documents.

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

9VAC25-31-100. Application for a permit.

A. Duty to apply. The following shall submit a complete application to the department in accordance with this section. The requirements for concentrated animal feeding operations are described in subdivisions C 1 and 2 of 9VAC25-31-130.

1. Any person who discharges or proposes to discharge pollutants; and

2. Any person who owns or operates a sludge-only facility whose biosolids use or sewage sludge disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit.

B. Exceptions. The following are not required to submit a complete application to the department in accordance with this section unless the ~~board~~ department requires otherwise:

1. Persons covered by general permits;

2. Persons excluded from the requirement for a permit by this chapter; or

3. A user of a privately owned treatment works.

C. Who applies.

1. The owner of the facility or operation.

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

3. Notwithstanding the requirements of subdivision 2 of this subsection, biosolids land application by the operator may be authorized by the owner's permit.

D. Time to apply.

1. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the ~~board~~ department. Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180-day requirement to avoid delay. New discharges composed entirely of stormwater, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

2. All TWTDS whose biosolids use or sewage sludge disposal practices are regulated by 9VAC25-31-420 through 9VAC25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its biosolids use or sewage sludge disposal practice or practices, using a form provided by the department. The ~~board~~ department will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, electronic mail address, and ownership status;

(3) A description of the biosolids use or sewage sludge disposal practices. Unless the biosolids meets the requirements of subdivision Q 9 d of this section, the description must include the name and address of any facility where biosolids or sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the biosolids or sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the ~~board~~ department may require permit applications from any TWTDS at any time if the ~~board~~ department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for biosolids use or sewage sludge disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

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

F. Completeness.

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

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city, or town shall inform in writing the applicant and the ~~board~~ department of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city, or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the ~~board~~ department has waived application requirements under subsection K or Q of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

5. Except as specified in subdivision 5 a of this subsection, a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N (Effluent Guidelines and Standards) or O (Sewage Sludge).

a. For the purposes of this requirement, a method approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O is "sufficiently sensitive" when:

(1) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter;

(2) The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(3) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O for the measured pollutant or pollutant parameter.

b. When there is no analytical method that has been approved under 40 CFR 136, required under 40 CFR Chapter I, Subchapter N or O, and is not otherwise required by the director, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method.

6. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of biosolids shall be complete unless it contains certification from the governing body of the locality in which the biosolids is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

7. No application for a permit to land apply biosolids in accordance with Part VI (9VAC25-31-420 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

G. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections H through L and Q through R of this section).

1. The activities conducted by the applicant that require it to obtain a VPDES permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

3. Up to four SIC and NAICS codes that best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, electronic mail address, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA (42 USC § 6921);

b. UIC program under SDWA (42 USC § 300h);

c. VPDES program under the CWA and the law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);

h. Dredge or fill permits under § 404 of the CWA; and

i. Other relevant environmental permits, including state permits;

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

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

9. An indication of whether the facility uses cooling water and the source of the cooling water; and

10. An indication of whether the facility is requesting any of the variances in subsection M of this section, if known at the time of application.

H. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of subsection I of this section, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area that contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater run-off; the average flow that each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of stormwater may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for stormwater run-off, spillage or leaks).

5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by 9VAC25-31-230 B 2.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. Information on the discharge of pollutants specified in this subdivision (except information on stormwater discharges that is to be provided as specified in 9VAC25-31-120).

a. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 unless use of another method is required under 40 CFR Subchapter N or O. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the ~~board~~ department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in subdivisions 7 e and f of this subsection that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. When this subdivision requires analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli) and Enterococci (previously known as fecal

streptococcus at 40 CFR 122.26 (d)(2)(iii)(A)(3)), or volatile organics, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR 136. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than stormwater discharges, the ~~board~~ department may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged. Results of analyses of individual grab samples for any parameter may be averaged to obtain the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR 136.3 (e)) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR 136.3(e)) and that sample integrity is not compromised by compositing.

b. For stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a stormwater discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for stormwater discharges under 9VAC25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the ~~board~~ department). However, a minimum of one grab sample may be taken for stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-31-120 B 1. For all stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The ~~board~~ department may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated stormwater run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

(1) Biochemical oxygen demand (BOD_5);

(2) Chemical oxygen demand;

(3) Total organic carbon;

(4) Total suspended solids;

(5) Ammonia (as N);

(6) Temperature (both winter and summer); and

(7) pH.

d. The ~~board~~ department may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater, except as indicated in subdivisions 7 e (3), (4), and (5) of this subsection:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for

the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, cyanide, and total phenols).

(3) Subdivision H 7 e (1) of this section and the corresponding portions of the VPDES Application Form 2C are suspended as they apply to coal mines.

(4) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES Application Form 2C are suspended as they apply to:

(a) Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(b) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (40 CFR Part 440, Subpart B) and testing and reporting for all four fractions in all other subcategories of this industrial category.

(c) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES Application Form 2C are suspended as they apply to:

(a) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

(b) Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

(c) Testing and reporting for the acid, base/neutral, and pesticide fractions in the petroleum refining industrial category.

(d) Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral, and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

(e) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process waste streams of the Steam Electric Power Plant industrial category.

f. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

h. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

i. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

j. Where quantitative data are required in subdivisions H 7 a through i of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that all data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct. The ~~board~~ department may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the ~~board~~ department has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the ~~board~~ department, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the ~~board~~ department, as the ~~board~~ department may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

I. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for stormwater discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for VPDES permits that discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the ~~board~~ department. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. When analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including E. coli), and Enterococci (previously known as fecal streptococcus) and volatile organics is required in subdivisions I 4 a (1) through (11) of this section, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite of aliquots is required. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD_5).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The ~~board~~ department may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application that demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results that he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for stormwater run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the ~~board~~ department.

J. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision G 7 of this section;

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

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs required to seek coverage under a permit after December 31, 2009, a nutrient management plan that at a minimum satisfies the requirements specified in subsection E of 9VAC25-31-200 and subdivision C 5 of 9VAC25-31-130, including, for all CAFOs subject to 40 CFR Part 412 Subpart C or Subpart D, the requirements of 40 CFR 412.4(c), as applicable.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the ~~board~~ department.

K. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the ~~board~~ department must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit

applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The ~~board~~ department may waive any requirement of this subsection if it has access to substantially identical information. The ~~board~~ department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the ~~board's~~ department's justification for the waiver. A regional administrator's disapproval of the ~~board's~~ department's proposed waiver does not constitute final agency action but does provide notice to the ~~board~~ department and permit applicant that EPA may object to any ~~board~~ department-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

b. Name, mailing address, telephone number, and electronic mail address of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under § 404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of types of collection systems used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises;

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, phone number, and electronic mail address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, electronic mail address, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent; and

i. An indication of whether applicant is operating under or requesting to operate under a variance as specified in subsection N of this section, if known at the time of application.

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic:

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements.

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

b. The following information, if known, for each outfall through which effluent is discharged to surface waters:

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD_5 or $CBOD_5$) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable;

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through 4 k of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The ~~board~~ department may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has

two or more outfalls with substantially identical effluent. The ~~board~~ department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge;

b. All applicants must sample and analyze for the following pollutants:

(1) Biochemical oxygen demand (BOD_5 or $CBOD_5$);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

d. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

e. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the ~~board~~ department must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J, and for any other pollutants for which the ~~board~~ department or EPA have established water quality standards applicable to the receiving waters.

f. The ~~board~~ department may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

g. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The ~~board~~ department may require additional samples, as appropriate, on a case-by-case basis.

h. All existing data for pollutants specified in subdivisions 4 b through 4 f of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

i. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing VPDES permit. When analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli), or volatile organics is required in subdivisions K 4 b, c, and e of this section, grab samples must be collected for those pollutants. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

j. The effluent monitoring data provided must include at least the following information for each parameter:

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

k. Unless otherwise required by the ~~board~~ department, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the ~~board~~ department, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including the history of toxic impacts and compliance problems at the POTW) that the ~~board~~ department determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the ~~board~~ department may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The ~~board~~ department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the ~~board~~ department.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The ~~board~~ department recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136, as directed by the ~~board~~ department.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and nonsignificant categorical industrial users (NSCIUs), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9VAC25-31-10, that discharges to the POTW:

(1) Name and mailing address;

(2) Description of all industrial processes that affect or contribute to the SIU's discharge;

(3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the ~~board~~ department for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA),

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261, the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261, if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

(a) The number of events in the past year;

(b) The average duration per event, if available;

(c) The average volume per CSO event, if available; and

(d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

(a) Name of receiving water;

(b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, electronic mail address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the ~~board~~ department.

L. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection I of this section or new discharges of stormwater associated with industrial activity that are subject to the

requirements of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision H 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for stormwater run-off, spillage, or leaks);

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions I 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The ~~board~~ department may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements:

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than 24 months after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection H of this section. However, the applicant need not complete those portions of subsection H of this section requiring tests that have already been performed and

reported under the discharge monitoring requirements of the VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the ~~board~~ department.

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

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

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

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

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

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

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

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

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

N. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G.

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later

than the close of the public comment period for the draft permit on the permit from which the modification is sought.

O. Expedited variance procedures and time extensions.

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

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

P. Recordkeeping. Except for information required by subdivision D 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

Q. Sewage sludge management. All TWTDS subject to subdivision D 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The ~~board~~ department may waive any requirement of this subsection if it has access to substantially identical information. The ~~board~~ department may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the ~~board's~~ department's justification for the waiver. A regional administrator's disapproval of the ~~board's~~ department's proposed waiver does not constitute final agency action, but does provide notice to the ~~board~~ department and the permit applicant that EPA may object to any ~~board~~ department issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, telephone number, and electronic mail address of the applicant; and

g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

b. UIC program under the Safe Drinking Water Act (SDWA);

c. NPDES program under the Clean Water Act (CWA);

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

e. Nonattainment program under the Clean Air Act;

f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. Dredge or fill permits under § 404 of the CWA;

h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application of biosolids, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. All applicants must submit an odor control plan that contains at minimum:

a. Methods used to minimize odor in producing biosolids;

b. Methods used to identify malodorous biosolids before land application (at the generating facility);

c. Methods used to identify and abate malodorous biosolids that have been delivered to the field, prior to land application; and

d. Methods used to abate malodor from biosolids if land applied.

7. The applicant must submit biosolids monitoring data for the pollutants for which limits in biosolids have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

a. When applying for authorization to land apply a biosolids source not previously included in a VPDES or Virginia Pollution Abatement Permit, the biosolids shall be sampled and analyzed for PCBs. The sample results shall be submitted with the permit application or request to add the source.

b. The ~~board~~ department may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

c. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the biosolids and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

d. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490, 40 CFR Part 503 (March 26, 2007), and 40 CFR Part 136 (March 26, 2007).

e. The monitoring data provided must include at least the following information for each parameter:

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(2) The analytical method used; and

(3) The method detection level.

8. If the applicant is a person who prepares biosolids or sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates biosolids or sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives biosolids or sewage sludge from another facility, the following information for each facility from which biosolids or sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of biosolids or sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If biosolids from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B Table 1, the pollutant concentrations in 9VAC25-31-540 B Table 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the biosolids is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If biosolids from the applicant's facility is sold or given away in a bag or other container for application to the land, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of biosolids subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the biosolids being sold or given away.

f. If biosolids or sewage sludge from the applicant's facility is provided to another person who prepares biosolids, as defined in 9VAC25-31-500, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information for each facility receiving the biosolids or sewage sludge:

(1) The name, mailing address, and electronic mail address of the receiving facility;

(2) The total dry metric tons per 365-day period of biosolids or sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places biosolids in bags or containers for sale or give-away for application to the land, a copy of any labels or notices that accompany the biosolids.

9. If biosolids from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 8 d, e, or f of this subsection, the applicant must provide the following information:

a. Written permission of landowners on the most current form approved by the ~~board~~ department.

b. The total dry metric tons per 365-day period of biosolids subject to this subsection that is applied to the land.

c. If any land application sites are located in states other than the state where the biosolids is prepared, a description of how the applicant will notify the permitting authority for the state where the land application sites are located.

d. The following information for each land application site that has been identified at the time of permit application:

(1) The DEQ control number, if previously assigned, identifying the land application field or site. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location;

(2) The site's latitude and longitude in decimal degrees to three decimal places and method of determination;

(3) A legible topographic map and aerial photograph, including legend, of proposed application areas to scale as needed to depict the following features:

(a) Property boundaries;

(b) Surface water courses;

(c) Water supply wells and springs;

(d) Roadways;

(e) Rock outcrops;

(f) Slopes;

(g) Frequently flooded areas (National Resources Conservation Service (NRCS) designation);

(h) Occupied dwellings within 400 feet of the property boundaries and all existing extended dwelling and property line setback distances;

(i) Publicly accessible properties and occupied buildings within 400 feet of the property boundaries and the associated extended setback distances; and

(j) The gross acreage of the fields where biosolids will be applied;

(4) County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant;

(5) County tax maps labeled with Tax Parcel ID or IDs for each farm to be included in the permit, which may include multiple fields, to depict properties within 400 feet of the field boundaries;

(6) A USDA soil survey map, if available, of proposed sites for land application of biosolids;

(7) The name, mailing address, telephone number, and electronic mail address of each site owner, if different from the applicant;

(8) The name, mailing address, telephone number, and electronic mail address of the person who applies biosolids to the site, if different from the applicant;

(9) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(10) Description of agricultural practices including a list of proposed crops to be grown;

(11) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in biosolids;

(12) Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, and monthly storage (input and drawdown); and

(13) Other information that describes how the site will be managed, as specified by the ~~board~~ department.

e. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk biosolids subject to 9VAC25-31-540 B Table 2 will be applied, to ascertain whether bulk biosolids subject to 9VAC25-31-540 B Table 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and electronic mail address, if available, of a contact person at the permitting authority; and

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site since July 20, 1993, if, based on the

inquiry in subdivision 9 e (1) of this subsection, bulk biosolids subject to cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 has been applied to the site since July 20, 1993.

10. Biosolids storage facilities not located at the site of the wastewater treatment plant. Plans and specifications for biosolids storage facilities not located at the site of the wastewater treatment plant generating the biosolids, including routine and on-site storage, shall be submitted for issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:

a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map;

b. Location of any required soil, geologic, and hydrologic test holes or borings;

c. Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary:

(1) Water wells (operating or abandoned);

(2) Surface waters;

(3) Springs;

(4) Public water supplies;

(5) Sinkholes;

(6) Underground and surface mines;

(7) Mine pool (or other) surface water discharge points;

(8) Mining spoil piles and mine dumps;

(9) Quarries;

(10) Sand and gravel pits;

(11) Gas and oil wells;

(12) Diversion ditches;

(13) Occupied dwellings, including industrial and commercial establishments;

(14) Landfills and dumps;

(15) Other unlined impoundments;

(16) Septic tanks and drainfields; and

(17) Injection wells;

d. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:

(1) Maximum and minimum percent slopes;

(2) Depressions on the site that may collect water;

(3) Drainage ways that may attribute to rainfall run-on to or run-off from this site; and

(4) Portions of the site, if any, that are located within the 100-year floodplain;

e. Data and specifications for the liner proposed for seepage control;

f. Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances;

g. Calculations justifying impoundment capacity; and

h. Groundwater monitoring plans for the facilities if required by the department. The groundwater monitoring plan shall include pertinent geohydrological data to justify upgradient and downgradient well location and depth.

11. Staging. Generic plans are required for staging of biosolids.

12. A biosolids management plan shall be provided that includes the following minimum site specific information at the time of permit application:

a. A comprehensive, general description of the operation shall be provided, including biosolids source or sources, quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.

b. A nutrient management plan approved by the Department of Conservation and Recreation as required for application sites prior to ~~board~~ department authorization under the following conditions:

(1) Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

(2) Sites where land application is proposed more frequently than once every three years at greater than 50% of the annual agronomic rate;

(3) Mined or disturbed land sites where land application is proposed at greater than agronomic rates; or

(4) Other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

13. Biosolids transport.

a. General description of transport vehicles to be used;

b. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup (including vehicle cleaning), field reclamation, and emergency spill notification and cleanup measures; and

c. Voucher system used for documentation and recordkeeping.

14. Field operations.

a. Storage.

(1) Routine storage at facilities not located at the site of the wastewater treatment plant – supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, and inspections for structural integrity;

(2) On-site storage – procedures for ~~department/board~~ department approval and implementation;

(3) Staging – procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use; and

(4) Field reestablishment of offloading (staging) areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles;

(2) Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis; and

(3) Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice-covered or snow-covered ground; establishment of setback distances, slopes, prohibited access for beef and dairy animals, and soil pH requirements; and proper site specific biosolids loading rates on a field-by-field basis.

15. An applicant for a permit authorizing the land application of biosolids shall provide to the department, and to each locality in which the applicant proposes to land apply biosolids, written evidence of financial responsibility. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

16. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, telephone number, and electronic mail address for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, mailing address, and electronic mail address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

17. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name or number, contact person, mailing address, telephone number, and electronic mail address of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

18. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, electronic mail address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Solid Waste Management Regulations, 9VAC20-81.

19. All applicants must provide the name, mailing address, telephone number, electronic mail address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to biosolids or sewage sludge generation, treatment, use, or disposal.

20. At the request of the ~~board~~ department, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the biosolids use and sewage sludge disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the ~~board~~ department.

21. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

R. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

3. Cooling water intake structure data. These include:

a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and

e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as

required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in this subdivision 4 is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

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

A. All permit applications shall be signed as follows:

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

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

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

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

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

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

3. The written authorization is submitted to the department.

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

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

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

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

9VAC25-31-120. Stormwater discharges.

A. Permit requirements.

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

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

b. A discharge associated with industrial activity; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Application requirements for stormwater discharges associated with industrial activity.

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

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

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

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

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

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

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

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

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

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

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

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

(f) The date and duration (in hours) of the storm event or events sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled run-off and the duration between the storm event sampled and

the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

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

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

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

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

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

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

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

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

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

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

1. Individual applications.

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

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

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

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

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

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

D. Petitions.

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

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

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

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

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

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

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

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

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

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

2. Storm resistant shelter is not required for:

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

b. Adequately maintained vehicles used in material handling; and

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

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

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

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

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

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

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

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

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

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

(3) Materials or products from past industrial activity;

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

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

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

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

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

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

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

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

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

9VAC25-31-130. Concentrated animal feeding operations.

A. Permit requirement for CAFOs.

1. Concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with subsection B of this section are point sources that require VPDES permits for discharges. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations. The ~~board~~ department may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the ~~board~~ department shall consider the following factors:

a. The size of the animal feeding operation and the amount of wastes reaching surface waters;

b. The location of the animal feeding operation relative to surface waters;

c. The means of conveyance of animal wastes and process wastewaters into surface waters;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into surface waters; and

e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of Medium CAFO in this regulation shall be designated as a concentrated animal feeding operation unless:

a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the ~~board~~ department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. VPDES permit authorization.

1. Permit requirement. The owners or operators of a CAFO shall not discharge unless the discharge is authorized by a VPDES permit. In order to obtain authorization under a VPDES permit, the CAFO owner or operator shall either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. The owners or operators of a CAFO must have obtained authorization under the VPDES permit at the time that the CAFO discharges.

2. Information to submit with permit application. A permit application for an individual permit must include the information specified in 9VAC25-31-100 J. A notice of intent for a general permit must include the information specified in 9VAC25-31-100 J and 9VAC25-31-170.

3. Land application discharges from a CAFO are subject to VPDES requirements. The discharge of manure, litter or process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural stormwater discharge as provided in 33 USC § 1362(14). For purposes of this subdivision, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the 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, as specified in subdivisions E 1 f through i of 9VAC25-31-200, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

a. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200.

b. Unpermitted Large CAFOs shall maintain documentation specified in subdivision E 1 i of 9VAC25-31-200 either on site or at a nearby office, or otherwise make such documentation readily available to department staff upon request.

4. Procedures for CAFOs seeking coverage under a general permit. CAFO owners or operators shall submit a registration statement when seeking authorization to discharge under a general permit in accordance with subsection B of 9VAC25-31-170. The ~~board~~ department will review registration statements submitted by CAFO owners or operators to ensure that the registration statement includes the information required by subsection J of 9VAC25-31-100, including a nutrient management plan that meets the requirements of subsection E of 9VAC25-31-200 and applicable effluent limitations and standards, including those specified in 40 CFR Part 412. When additional information is necessary to complete the registration statement or clarify, modify, or supplement previously submitted material, the ~~board~~ department may request such information from the owner or operator. If the ~~board~~ department makes a preliminary determination that the registration statement meets the requirements of subsection J of 9VAC25-31-100 and subsection E of 9VAC25-31-200, the ~~board~~ department will notify the public of the ~~board's~~ department's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the registration statement submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and public hearing requests, and the public hearing process if a request for a public hearing is granted, shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310, and 40 CFR 124.13. The board may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and request a public hearing that differs from the time period specified in 9VAC25-31-290. The ~~board's~~ department's response to significant comments received during the comment period is governed by 9VAC25-31-320, and, if necessary, the ~~board~~ department will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the ~~board~~ department authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. The ~~board~~ department will notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

5. Changes to a nutrient management plan. Any permit issued to a CAFO shall require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the ~~board~~ department:

a. The CAFO owner or operator shall provide the ~~board~~ department with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of subdivisions E 5 a (2) and E 5 b (4) of 9VAC25-31-200 are not subject to the requirements of this subdivision 5.

b. The ~~board~~ department will review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 CFR Part 412, and will determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the ~~board~~ department will notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the ~~board~~ department will determine whether such changes are substantial changes as described in subdivision 5 c of this subsection.

(1) If the ~~board~~ department determines that the changes to the terms of the nutrient management plan are not substantial, the ~~board~~ department will make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(2) If the ~~board~~ department determines that the changes to the terms of the nutrient management plan are substantial, the ~~board~~ department will notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, public hearing requests, and the public hearing process if a public hearing is held shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310, and 40 CFR 124.13. The board may establish~~, either~~ by regulation or the department may establish in the CAFO's permit, an appropriate period of time for the public to comment and request a public hearing on the proposed changes that differs from the time period specified in 9VAC25-31-290. The ~~board~~ department will respond to all significant comments received during the comment period as provided in 9VAC25-31-320, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the ~~board~~ department incorporates the revised terms of the nutrient management plan into the permit, the ~~board~~ department will notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include:

(1) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing VPDES permit in accordance with the requirements of subdivision E 5 of 9VAC25-31-200, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

(2) Any changes to the field-specific maximum annual rates for land application, as set forth in subdivision E 5 a of 9VAC25-31-200, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in subdivision E 5 b of 9VAC25-31-200;

(3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with subdivision E 5 of 9VAC25-31-200; and

(4) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to state waters.

6. Causes for modification of nutrient management plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with subdivision C 4 of 9VAC25-31-130 and 9VAC25-31-170 is not a cause for modification pursuant to the requirements of 9VAC25-31-370.

9VAC25-31-140. Concentrated aquatic animal production facilities.

A. Concentrated aquatic animal production facilities, as defined in this chapter, are point sources subject to the VPDES permit program.

B. Case-by-case designations. The ~~board~~ department may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the ~~board~~ department shall consider the following factors:

a. The location and quality of the receiving surface waters;

b. The holding, feeding, and production capacities of the facility;

c. The quantity and nature of the pollutants reaching surface waters; and

d. Other relevant factors.

2. A permit application shall not be required from a concentrated aquatic animal production facility designated under this subsection until the department has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the VPDES permit program.

9VAC25-31-165. Requirements applicable to cooling water intake structures.

A. Definitions. The following definitions apply specifically to this section:

"Annual mean flow" means the average of daily flows over a calendar year.

"Closed-cycle recirculating system" means a system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes.

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to withdraw cooling water from state waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

"Design intake flow" means the value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

"Design intake velocity" means the value assigned (during the design of a cooling water intake structure) to the average speed at which intake water passes through the open area of the intake screen (or other device) against which organisms might be impinged or through which they might be entrained.

"Entrainment" means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

"Estuary" means a semi-enclosed body of water that has a free connection with open seas and within which the seawater is measurably diluted with fresh water derived from land drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is typically less than 30 parts per thousand (by mass).

"Existing facility" means any facility that is not a new facility.

"Freshwater river or stream" means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this section, a flow-through reservoir with a retention time of seven days or less will be considered a freshwater river or stream.

"Hydraulic zone of influence" means that portion of the source water body hydraulically affected by the cooling water intake structure withdrawal of water.

"Impingement" means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

"Lake or reservoir" means any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than seven days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an average hydraulic retention time of seven days or less should be considered a freshwater river or stream.

"Maximize" means to increase to the greatest amount, extent, or degree reasonably possible.

"Minimize" means to reduce to the smallest amount, extent, or degree reasonably possible.

"Natural thermal stratification" means the naturally-occurring division of a water body into horizontal layers of differing densities as a result of variations in temperature at different depths.

"New facility" means any building, structure, facility, or installation that meets the definition of a "new source" or "new discharger" and is a greenfield or stand-alone facility that commences construction after January 17, 2002, and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility. A

stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site. New facility does not include new units that are added to a facility for purposes of the same general industrial operation (for example, a new peaking unit at an electrical generating station).

"Ocean" means marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

"Source water" means the water body from which the cooling water is withdrawn.

"Thermocline" means the middle layer of a thermally stratified lake or reservoir. In this layer, there is a rapid decrease in temperatures.

"Tidal excursion" means the horizontal distance along the estuary or tidal river that a particle moves during one tidal cycle of ebb and flow.

"Tidal river" means the most seaward reach of a river or stream where the salinity is typically less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

B. Cooling water intake structures for new facilities.

1. Applicability.

a. This section applies to a new facility if it:

(1) Is a point source that uses or proposes to use a cooling water intake structure;

(2) Has at least one cooling water intake structure that uses at least 25% of the water it withdraws for cooling purposes as specified in subdivision 1 c of this subsection; and

(3) Has a design intake flow greater than two million gallons per day (MGD).

b. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw(s) water from waters of the United States. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to state waters. This provision is intended to prevent circumvention of these requirements by creating arrangements to receive cooling water from an entity that is not itself a point source.

c. The threshold requirement that at least 25% of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new facility meets the 25% cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25% of the total water withdrawn.

d. This section does not apply to facilities that employ cooling water intake structures in the offshore and coastal subcategories of the oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

2. Compliance.

a. The owner or operator of a new facility must comply with either Track I in subdivision 2 b or c of this subsection or Track II in subdivision 2 d of this subsection. In addition to meeting the requirements in subdivision 2 b, c or d of this subsection, the owner or operator of a new facility may be required to comply with subdivision 2 e of this subsection.

b. Track I requirements for new facilities that withdraw equal to or greater than 10 MGD. Facilities must comply with all of the following requirements:

(1) Reduce intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;

(2) Design and construct each cooling water intake structure to a maximum through-screen design intake velocity of 0.5 ft/s;

(3) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures meets the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(4) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information,

there are migratory and/or sport or commercial species of impingement concern to the ~~board~~ department that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the ~~board~~ department, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the ~~board~~ department, and the ~~board~~ department determines that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would contribute unacceptable stress to these species of concern;

(6) Submit the application information required in 9VAC25-31-100 Q and subdivision 4 b of this subsection;

(7) Implement the monitoring requirements specified in subdivision 5 of this subsection;

(8) Implement the record-keeping requirements specified in subdivision 6 of this subsection.

c. Track I requirements for new facilities that withdraw equal to or greater than two MGD and less than 10 MGD and that choose not to comply with subdivision 2 b of this subsection. Facilities must comply with all of the following requirements:

(1) Design and construct each cooling water intake structure at the facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meets the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(3) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information there are migratory and/or sport or commercial species of impingement concern to the ~~board~~ department that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the ~~board~~ department, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivisions 2 c (1) and (2) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(4) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish;

(5) Submit the application information required in 9VAC25-31-100 Q and 9VAC25-31-165 B 4;

(6) Implement the monitoring requirements specified in 9VAC25-31-165 B 5;

(7) Implement the recordkeeping requirements specified in 9VAC25-31-165 B 6.

d. Track II. The owner or operator of a new facility that chooses to comply under Track II must comply with the following requirements:

(1) Demonstrate to the ~~board~~ department that the technologies employed will reduce the level of adverse environmental impact from cooling water intake structures to a comparable level to that which would be achieved using the requirements of subdivision 3 b (1) and (2) of this subsection. This demonstration must include a

showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those that would result implementing the requirements of subdivisions 3 b (1) and (2) of this subsection. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the ~~board~~ department identifies as species of concern. In identifying such species the ~~board~~ department may consider information provided by fishery management agencies with responsibility for fisheries potentially affected by the cooling water intake structure along with data and information from other sources.

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meet the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

(3) Submit the application information required in 9VAC25-31-100 Q and 9VAC25-31-165 B 4 c.

(4) Implement the monitoring requirements specified in 9VAC25-31-165 B 5.

(5) Implement the record-keeping requirements specified in 9VAC25-31-165 B 6.

e. The owner or operator of a new facility must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new facility that the ~~board~~ department deems are reasonably necessary to comply with any provision of state law, including compliance with state water quality standards (including designated uses, criteria, and antidegradation requirements).

3. Alternative requirements.

a. Any interested person may request that alternative requirements less stringent than those specified in 9VAC25-31-165 B 2 a through e be imposed in the permit. The ~~board~~ department may establish alternative requirements less stringent than the requirements of 9VAC25-31-165 B 2 a through e only if:

(1) There is an applicable requirement under 9VAC25-31-165 B 2 a through e;

(2) The ~~board~~ department determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and state law.

b. The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

4. Application information requirements.

a. The owner or operator of a new facility must submit to the department:

(1) A statement of intention to comply with either:

(a) The Track I requirements for new facilities that withdraw equal to or greater than 10 MGD in 9VAC25-31-165 B 2 b;

(b) The Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD in 9VAC25-31-165 B 2 c or;

(c) The requirements for Track II in 9VAC25-31-165 B 2 d.

(2) The owner or operator must also submit the application information required by 9VAC25-31-100 Q and the information required in either subdivision 4 b of this subsection for Track I or subdivision 4 c of this section for Track II when application is made for a new or reissued VPDES permit.

b. Track I application requirements. To demonstrate compliance with Track I requirements in 9VAC25-31-165 B 2 b or c, collect and submit to the department the information in subdivision 4 b (1) through (4) of this subsection.

(1) Flow reduction information. To comply with the flow reduction requirements in 9VAC25-31-165 B 2 b (1), submit the following information to demonstrate reduction of flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

(a) A narrative description of the system that has been designed to reduce intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that make-up and blowdown flows have been minimized; and

(b) If the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, provide documentation that the amount of cooling water that is not reused or recycled has been minimized.

(2) Velocity information. Submit the following information to demonstrate compliance with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure:

(a) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(b) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

(3) Source water body flow information. Submit the following information to demonstrate that the cooling water intake structure meets the flow requirements in 9VAC25-31-165 B 2 b (3) and c (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(4) Design and Construction Technology Plan. To comply with 9VAC25-31-165 B 2 b (4) and (5), or 9VAC25-31-165 B 2 c (3) and (4), submit the following information in a Design and Construction Technology Plan:

(a) Information to demonstrate whether or not the criteria in 9VAC25-31-165 B 2 b (4) and b (5), or 9VAC25-31-165 B 2 c (3) and c (4) are met;

(b) Delineation of the hydraulic zone of influence for the cooling water intake structure;

(c) New facilities required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures selected based on information collected for the Source Water Biological Baseline Characterization required by 9VAC25-31-100 Q. (Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information:

(i) A narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that will be used to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;

(ii) A narrative description of the design and operation of the design and construction technologies that will be used to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and

(iii) Design calculations, drawings, and estimates to support the descriptions provided in 9VAC25-31-165 B 4 b (4) (c) (i) and (ii).

c. Application requirements for Track II. In order to with the requirements of Track II in 9VAC25-31-165 B 2 d collect and submit the following information:

(1) Source water body flow information. Submit to the department the following information to demonstrate that the cooling water intake structure meets the source water body requirements in 9VAC25-31-165 B 2 d (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and thermal or turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(2) Track II Comprehensive Demonstration Study. Perform and submit the results of a Comprehensive Demonstration Study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at the cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those achieved by implementation of the requirements in 9VAC25-31-165 B 2 b (1) and (2) of Track I. To demonstrate the "comparable level" requirement, include information showing that:

(a) Both impingement mortality and entrainment of all life stages of fish and shellfish are reduced by 90% or greater of the reduction that would be achieved through 9VAC25-31-165 B 2 b (1) and (2); or

(b) If the demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the water body at a substantially similar level to that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2); and

(c) Develop and submit a plan to the department containing a proposal for how information will be collected to support the study. The plan must include:

(i) A description of the proposed and/or implemented technology(ies) to be evaluated in the study;

(ii) A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If existing source water body data is used, it must be no more than five years old, demonstrated sufficient to develop a scientifically valid estimate of potential impingement and entrainment impacts, and include documentation that the data were collected using appropriate quality assurance/quality control procedures;

(iii) Any public participation or consultation with federal or state agencies undertaken in developing the plan; and

(iv) A sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling, and data analysis. The sampling and data analysis methods proposed must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods; and

(d) Submit documentation of the results of the study to the director. Documentation of the results of the study must include:

(i) Source Water Biological Study. The Source Water Biological Study must include a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure; an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

(ii) Evaluation of potential cooling water intake structure effects. This evaluation will include calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies selected to implement requirements under Track II and an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish, demonstrating that the technologies reduce impingement mortality and entrainment of all life stages of fish and shellfish to a comparable level to that which would be achieved implementing the requirements in

9VAC25-31-165 B 2 b (1) and (2) of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and entrainment based on the results of the Source Water Biological Study. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

(iii) Evaluation of proposed restoration measures. If restoration measures are proposed to maintain the fish and shellfish provide information and data to show coordination with the appropriate fishery management agency(ies) and a plan that provides a list of the measures to implement to demonstrate and continue to ensure that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level to that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2).

(iv) Verification monitoring plan. Include in the study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement and entrainment to the level documented in 9VAC25-31-165 B 4 c (2) (d) (ii). The plan must describe the frequency of monitoring and the parameters to be monitored. The department will use the verification monitoring to confirm that the level of impingement mortality and entrainment reduction required in is met and that the operation of the technology has been optimized. Include a plan to conduct monitoring to verify that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level as that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2).

5. Monitoring. The owner or operator of a new facility will be required to perform monitoring to demonstrate compliance with the requirements specified in 9VAC25-31-165 B 2.

a. Biological monitoring. Monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data or the Comprehensive Demonstration Study, depending on whether compliance with Track I or Track II was chosen. The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Follow the monitoring frequencies identified below for at least two years after the initial permit issuance.

(1) Impingement sampling. Collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

(2) Entrainment sampling. Collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Collect samples only when the cooling water intake structure is in operation.

b. Velocity monitoring. If the facility uses surface intake screen systems, monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in 9VAC25-31-165 B 2 b (2) or c (1). If the facility uses devices other than surface intake screens, monitor velocity at the point of entry through the device. Monitor head loss or velocity during initial facility startup, and thereafter, at the frequency specified in the VPDES permit.

c. Visual or remote inspections. Conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. Conduct visual inspections at least weekly to ensure that any design and construction technologies are maintained and operated to ensure that they will continue to function as designed. Alternatively, inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

6. Records and reporting. The owner or operator of a new facility is required to keep records and report information and data to the department as follows:

a. Keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under 9VAC25-31-165 B 4, and any compliance monitoring data submitted under 9VAC25-31-165 B 5, for a period of at least three years from the date of permit issuance. The department may require that these records be kept for a longer period.

b. Provide the following to the department in a yearly status report:

(1) Biological monitoring records for each cooling water intake structure as required by 9VAC25-31-165 B 5 a;

(2) Velocity and head loss monitoring records for each cooling water intake structure as required by 9VAC25-31-165 B 5 b; and

(3) Records of visual or remote inspections as required in 9VAC25-31-165 B 5 c.

C. Cooling water intake structures for existing facilities.

Existing facilities that are not subject to requirements under this section must meet requirements under section 316(b) of the Clean Water Act determined by the department on a case-by-case, best professional judgment (BPJ) basis.

9VAC25-31-170. General permits.

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

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

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

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

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

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

g. Any other appropriate division or combination of boundaries.

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

a. Stormwater point sources; or

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

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

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

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

(4) Require the same or similar monitoring; and

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

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

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

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

B. Administration.

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

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

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

chapter, dischargers (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit.

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

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

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

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and stormwater discharges associated with industrial activity, may, at the discretion of the ~~board~~ department, be authorized to discharge under a general permit without submitting a notice of intent where the ~~board~~ department finds that a notice of intent requirement would be inappropriate. In making such a finding, the ~~board~~ department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The ~~board~~ department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

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

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

3. Requiring an individual permit.

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

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

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

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

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

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

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

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

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

(b) The size of the discharge;

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

(d) Other relevant factors.

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

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

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

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

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

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

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

9VAC25-31-180. New sources and new dischargers.

A. Criteria for new source determination.

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in this chapter, and

a. It is constructed at a site at which no other source is located; or

b. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the ~~board~~ department shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.

3. Construction on a site at which an existing source is located results in a permit modification subject to 9VAC25-31-390 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

4. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility engineering, and design studies do not constitute a contractual obligation under the paragraph.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or

new dischargers or otherwise do not meet the requirements of this subdivision.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under § 301(b)(2) of the CWA for the soonest ending of the following periods:

a. Ten years from the date that construction is completed;

b. Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

c. The period of depreciation or amortization of the facility for the purposes of §§ 167 or 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169, respectively).

2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

a. Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under the law and § 307(a) of the CWA; or

b. Additional permit conditions controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

3. When a VPDES permit issued to a source with a protection period under subdivision 1 of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of § 301 of the CWA and any other then applicable requirements of the CWA and the law immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

4. The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under 9VAC25-31-250 A 2.

5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. Monitoring and records.

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

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

3. Records of monitoring information shall include:

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

b. The individual who performed the sampling or measurements;

c. The date analyses were performed;

d. The individual who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

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

5. Samples taken shall be analyzed by a laboratory certified under 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

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

L. Reporting requirements.

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

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

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

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

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity

which may result in noncompliance with permit requirements.

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

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

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

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

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

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

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

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

b. Breakdown of processing or accessory equipment;

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

d. Flooding or other acts of nature.

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

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

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

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

(3) The director may also require permittees to electronically submit reports not related to combined

sewer overflows, sanitary sewer overflows, or bypass events under this subdivision.

b. The following shall be reported within 24 hours under this subdivision:

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

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

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

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

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

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

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

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

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

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

M. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

N. Upset.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and Waterworks and Wastewater Works Operators Licensing Regulations (18VAC160-30). Notwithstanding the foregoing requirement, unless the discharge is determined by the ~~board~~ department on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

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

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

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

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

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

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

E. Concentrated animal feeding operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges as defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and

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

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

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

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

plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

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

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

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

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

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

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

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

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

9VAC25-31-210. Establishing permit conditions.

A. In addition to conditions required in all permits, the ~~board~~ department shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the law, the CWA and regulations. These shall include conditions under 9VAC25-31-240

(duration of permits), 9VAC25-31-250 (schedules of compliance), 9VAC25-31-220 (monitoring), electronic reporting requirements of 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of this chapter.

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

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

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

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

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

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

2. The ~~board~~ department may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Limitations on those pollutants; or

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

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

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

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

I. Monitoring requirements. The following monitoring requirements:

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

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

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

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

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

b. The volume of effluent discharged from each outfall;

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

d. According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR Chapter I, Subchapter N or O.

(1) For the purposes of this subdivision, a method is "sufficiently sensitive" when:

(a) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

(b) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O for the measured pollutant or pollutant parameter.

(2) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR Chapter I, Subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters;

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

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

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

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

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

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

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

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

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

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

2. Submit a local program when required by and in accordance with Part VII of this chapter to assure compliance with pretreatment standards to the extent applicable under § 307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII of this chapter. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII of this chapter;

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

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

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

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

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

3. Numeric effluent limitations are infeasible; or

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

L. Reissued permits.

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

effluent limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9VAC25-31-230. Calculating VPDES permit conditions.

A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 9VAC25-31-220 and subsection H of this section (limitations on internal waste streams).

B. Production-based limitations.

1. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

2. a. Except in the case of POTWs or as provided in subdivision 2 b of this subsection, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be

estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

b. (1) (a) The ~~board~~ department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(b) For the automotive manufacturing industry only, the ~~board~~ department may establish a condition under subdivision 2 b (1) (a) of this subsection if the applicant satisfactorily demonstrates to the ~~board~~ department at the time the application is submitted that its actual production, as indicated in subdivision 2 a of this subsection, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(2) If the ~~board~~ department establishes permit conditions under subdivision 2 b (1) of this subsection:

(a) The permit shall require the permittee to notify the department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(b) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the department under subdivision 2 b (2) (a) of this subsection, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and

(c) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

C. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA and the law; or

3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

D. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

1. Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

2. Average weekly and average monthly discharge limitations for POTWs.

E. Discharges which are not continuous, as defined in 9VAC25-31-10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;

2. Total mass;

3. Maximum rate of discharge of pollutants during the discharge; and

4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

F. Mass Limitations.

1. All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

a. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

b. When applicable standards and limitations are expressed in terms of other units of measurement; or

c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

G. Pollutants in intake water.

1. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water to the extent

necessary to meet the applicable technology-based limitation or standard, up to a maximum value equal to the influent value. Credit shall be granted only if:

a. The applicable effluent limitations and standards contained in the regulations incorporated by reference in 9VAC25-31-30 specifically provide that they shall be applied on a net basis; or

b. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meets the limitations and standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

3. Credit for the level of pollutants in the intake water may be considered in setting water quality-based effluent limitations according to 9VAC25-31-220 D. Where a total maximum daily load has been established for the receiving waterbody and it is applicable to the discharge, it shall be considered when such effluent limitations are developed. The ~~board~~ department may consider the presence of intake pollutants when determining either that water quality-based effluent limitations are not necessary under 9VAC25-31-220 D or that any water quality-based effluent limitations justified by 9VAC25-31-220 D will be established in a manner that does not hold the permittee responsible for removing pollutants originating in its intake water.

4. Additional monitoring may be necessary to determine eligibility for any credits and compliance with permit limits.

5. Credits shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The ~~board~~ department may waive this requirement for technology-based effluent limitations, standards, and prohibitions if he finds that no environmental degradation will result.

a. An intake pollutant is considered to be from the same body of water as the discharge if the ~~board~~ department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

(2) There is direct hydrological connection between the intake and discharge points; and

(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

Other site-specific factors relevant to the transport and fate of the pollutant may be considered in making this finding.

b. An intake pollutant from groundwater may be considered to be from the same body of water if the ~~board~~ department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions or treatment processes.

c. For pollutants in intake water provided by a water supply system, where the raw water supply is removed from the same body of water as the discharge, the concentration of the intake pollutant shall be determined at the point where the water enters the water supplier's distribution system.

d. Where a facility discharges intake pollutants that originate in part from the same body of water and in part from a different body of water, the effluent limitation may provide for intake credits for the portion of the pollutants derived from the same body of water, provided that adequate monitoring to determine compliance can be established and is included in the permit.

6. Credits shall not be granted if the discharger contributes to the level of the pollutant in the intake water prior to the intake.

7. Credits for intake pollutants do not apply to technology-based limitations on the discharge of raw water clarifier sludge generated from the treatment of intake water.

H. Internal waste streams.

1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by 9VAC25-31-220 I shall also be applied to the internal waste streams.

2. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

I. Disposal of pollutants into wells, POTWs or by land application.

1. When part of a discharger's process wastewater is not being discharged into surface waters or into the contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters, applicable effluent standards and limitations for the discharge in a VPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

a. If none of the waste from a particular process is discharged into surface waters, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

b. In all cases other than those described in subdivision 1 a of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to surface waters, and T is the total wastewater flow.

2. Subdivision 1 of this subsection does not apply to the extent that promulgated effluent limitations guidelines:

a. Control concentrations of pollutants discharged but not mass; or

b. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

3. Subdivision 1 of this subsection does not alter a discharger's obligation to meet any more stringent requirements established in the permit.

9VAC25-31-240. Duration of permits.

A. VPDES permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 9VAC25-31-70, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The ~~board~~ department may issue any permit for a duration that is less than the full allowable term under this section.

D. A permit may be issued to expire on or after the statutory deadline set forth in §§ 301(b)(2) (A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

E. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under subsection D of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

9VAC25-31-250. Schedules of compliance.

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the law, the CWA, and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

2. The first VPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

3. Schedules of compliance may be established in permits for existing sources which are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time for the discharger to attain compliance with the water quality-based limitations.

4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

5. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

B. A VPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for VPDES sources) rather than continuing to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit;

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline;

3. If the permittee is undecided whether to cease conducting regulated activities, the ~~board~~ department may issue or modify a permit to contain two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

c. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subdivision 3 a of this subsection it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the ~~board~~ department, such as a resolution of the board of directors of a corporation.

9VAC25-31-260. Draft permits.

A. Once an application is complete, the ~~board~~ department shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the ~~board~~ department tentatively decides to deny the permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to ~~board~~ department action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the ~~board~~ department shall provide public notice and opportunity for a public hearing prior to ~~board~~ department action on the application.

C. If the ~~board~~ department tentatively decides to issue a VPDES general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the ~~board~~ department decides to prepare a draft permit, the draft permit shall contain the following information:

1. All conditions under 9VAC25-31-190 and 9VAC25-31-210;

2. All compliance schedules under 9VAC25-31-250;

3. All monitoring requirements under 9VAC25-31-220; and

4. Effluent limitations, standards, prohibitions, standards for biosolids use or sewage sludge disposal, and conditions under 9VAC25-31-190, 9VAC25-31-200, 9VAC25-31-220, and Part VI (9VAC25-31-370 et seq.), and all variances that are to be included.

9VAC25-31-280. Fact sheet.

A. A fact sheet shall be prepared for every draft permit for a major VPDES facility or activity, for every Class I sludge management facility, for every VPDES general permit, for every VPDES draft permit that incorporates a variance or requires an explanation under subsection B 8 of this section, for every draft permit that includes a biosolids land application under 9VAC25-31-100 D 2, and for every draft permit which the ~~board~~ department finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set

forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The ~~board~~ department shall send this fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity that is the subject of the draft permit;

2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit including:

a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;

b. Procedures for requesting a public hearing and the nature of that hearing; and

c. Any other procedures by which the public may participate in the final decision;

6. Name and telephone number of a person to contact for additional information;

7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for biosolids use or sewage sludge disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for biosolids use or sewage sludge disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

a. Limitations to control toxic pollutants;

b. Limitations on internal waste streams;

c. Limitations on indicator pollutants;

d. Technology-based or sewage sludge disposal limitations set on a case-by-case basis;

e. Limitations to meet the criteria for permit issuance under 9VAC25-31-50; or

f. Waivers from monitoring requirements granted under 9VAC25-31-220 A;

9. For every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the ~~board's~~ department's decision on regulation of users;

10. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

11. Justification of waiver of any application requirements under 9VAC25-31-100 K or Q.

9VAC25-31-290. Public notice of permit actions and public comment period.

A. Scope.

1. The department shall give public notice that the following actions have occurred:

a. A draft permit has been prepared under 9VAC25-31-260 D;

b. A public hearing has been scheduled under 9VAC25-31-310; or

c. A VPDES new source determination has been made under 9VAC25-31-180.

2. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under 9VAC25-31-370 B. Written notice of that denial shall be given to the requester and to the permittee.

3. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

4. Public notices may describe more than one permit or permit actions.

B. Timing.

1. Public notice of the preparation of a draft permit required under subsection A of this section shall allow at least 30 days for public comment.

2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing, either by electronic or postal delivery, a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his rights to receive notice for any classes and categories of permits):

a. The applicant (except for VPDES general permits when there is no applicant);

b. Any other agency which the department knows has issued or is required to issue a VPDES, biosolids management permit;

c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);

d. Any state agency responsible for plan development under § 208(b)(2), § 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service;

e. Any user identified in the permit application of a privately owned treatment works;

f. Persons on a mailing list developed by:

(1) Including those who request in writing to be on the list;

(2) Soliciting persons for area lists from participants in past permit proceedings in that area; and

(3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as EPA regional and state funded newsletters, environmental bulletins, or state law journals. (The department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The department may delete from the list the name of any person who fails to respond to such a request.);

g. Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

h. Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. Except for permits for concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with 9VAC25-31-130 B, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. However, if the applicant so chooses for industrial minor permit actions, an abbreviated public notice shall be published in such newspaper, listing the name of the permitted facility, the type of discharge, and a link to the department's website where the full public notice consistent with subsection D of this section is posted. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of VPDES draft general permits;

c. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for VPDES general permits when there is no application;

d. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

f. A general description of the location of each existing or proposed discharge point, the name of the receiving water, the biosolids use and sewage sludge disposal practice, the location of each sludge treatment works treating domestic sewage, and use or disposal sites known at the time of permit application. For draft general permits, this requirement will be satisfied by a map or description of the permit area;

g. Requirements applicable to cooling water intake structures under § 316 of the CWA, in accordance with 9VAC25-31-165; and

h. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 9VAC25-31-310 shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

3. Public notice of a VPDES draft permit for a discharge where a request for alternate thermal effluent limitations has been filed shall include:

a. A statement that the thermal component of the discharge is subject to effluent limitations incorporated in 9VAC25-31-30 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under §§ 301 or 306 of the CWA;

b. A statement that an alternate thermal effluent limitation request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under the law and § 316(a) of the CWA and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

c. If the applicant has filed an early screening request for a CWA § 316(a) variance, a statement that the applicant has submitted such a plan.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a, b, c, and d of this section shall be mailed, by electronic or postal delivery, a copy of the fact sheet or statement of basis, the permit application (if any) and the draft permit (if any).

F. Upon receipt of an application for the issuance of a new or modified permit other than those for agricultural production or aquacultural production activities, the department shall:

1. Notify, in writing, the locality wherein the discharge or, as applicable, the associated land application of biosolids, or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage does or is proposed to take place of, at a minimum:

a. The name of the applicant;

b. The nature of the application and proposed discharge;

c. The availability and timing of any comment period; and

d. Upon request, any other information known to, or in the possession of, ~~the board or~~ the department regarding the applicant not required to be held confidential by this chapter.

2. Except for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage make a good faith effort to provide this same notice and information to (i) each locality and riparian property owner to a distance one-quarter mile downstream and one-quarter mile upstream or to the fall line whichever is closer on tidal waters and (ii) each locality and riparian property owner to a distance one-half mile downstream on nontidal waters. Distances shall be measured from the point, or proposed point, of discharge. If the receiving river at the point or proposed point of discharge is two miles wide or greater, the riparian property owners on the opposite shore need not be notified. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the commissioners of the revenue or the tax assessor's office of the affected jurisdictions upon request by the ~~board~~ department.

G. Whenever the department receives an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or an application to reissue with the addition of sites increasing acreage by 50% or more of that authorized by the initial permit, the department shall establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven or more than 14 days prior to the meeting. The department shall not issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

H. Following the submission of an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the department shall make a good faith effort to notify or cause to be notified persons residing on property bordering the sites that contain the proposed land application fields. This notification shall be in a manner selected by the department. For the purposes of this subsection, "site" means all contiguous land under common ownership, but which may contain more than one tax parcel.

I. Following the submission of an application to add a site that is not contiguous to sites included in an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such site and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

J. Before issuing any permit, if the ~~board~~ department finds that there are localities particularly affected by the permit, the ~~board~~ department shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at

least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged.

2. Mail, by electronic or postal delivery, the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

3. Accept written comments for at least 15 days after any public hearing on the permit, unless the ~~board votes to shorten~~ department shortens the period.

4. For the purposes of this section, consider the term "locality particularly affected" to mean any locality that bears any identified disproportionate material water quality impact that would not be experienced by other localities.

9VAC25-31-300. Public comments and requests for public hearings.

During the public comment period provided under 9VAC25-31-290, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall meet the requirements of ~~§ 62.1-44.15:02 B of the Code of Virginia~~ 9VAC25-31-315. All comments shall be considered in making the final decision and shall be answered as provided in 9VAC25-31-320.

9VAC25-31-310. Public hearings.

A. 1. Procedures for public hearings ~~and~~ for permits before the ~~board~~ department are those set forth in ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-31-315.

2. Public notice of the public hearing shall be given as specified in 9VAC25-31-290 of this chapter.

3. Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period for the draft permit shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the public hearing.

C. A tape recording or written transcript of the hearing shall be made available to the public.

D. Proceedings at~~, and the decision from,~~ the public hearing will be governed by ~~§ 62.1-44.15:02 of the Code of Virginia~~ the board's Procedural Rule No. 1 - Public and Formal Hearing Procedures (9VAC25-230), and the decision from the public hearing will be governed by 9VAC25-31-316.

9VAC25-31-315. Criteria for requesting and granting a public hearing on an individual permit action.

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing to contest the action or terms and conditions of the permit.

B. Requests for a public hearing shall contain the following information:

1. The name and postal mailing or email address of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative;

3. The reason for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and the conditions of the permit in question, together with suggested revisions and alterations to those terms, and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Water Control Board.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action and, within 30 calendar days following the expiration of the time period for the submission of requests, shall grant a public hearing, unless the permittee or applicant agrees to a later date if the director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with or in violation of the basic laws of the State Water Control Board for a water permit action, a federal law, or any regulation promulgated thereunder.

D. The director of DEQ shall notify by email or postal mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

E. If the request for a public hearing is granted, the director shall:

1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing.

2. Cause or require the applicant to publish notice of a public hearing to be published once in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located at least 30 days before the hearing date.

F. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

G. The director may, at the director's discretion, convene a public hearing on a permit action.

9VAC25-31-316. Controversial permits.

Before rendering a final decision on a controversial permit, the department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at that time. In making its decision, the department shall consider (i) the verbal and written comments received during the comment period and the public hearing made part of the record, (ii) any commentary of the board, and (iii) the agency files.

9VAC25-31-317. Controversial permits reporting.

At each regular meeting of the board, the department shall provide an overview and update regarding any controversial permits pending before the department that are relevant. Immediately after such presentation by the department, the board shall have an opportunity to respond to the department's presentation and provide commentary regarding such pending permit.

9VAC25-31-320. Response to comments.

A. At the time that a final permit is issued, the ~~board~~ department shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.

B. The response to comments shall be available to the public.

9VAC25-31-330. Conditions requested by the Corps of Engineers and other government agencies.

A. If during the comment period for an VPDES draft permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advised the department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the ~~board~~ department shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the VPDES permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the ~~board~~ department may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of this regulation, the law and of the CWA.

C. In appropriate cases the ~~board~~ department may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

9VAC25-31-340. Decision on variances.

A. The ~~board~~ department may grant or deny requests for variances requested pursuant to 9VAC25-31-100 L 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H.

B. The ~~board~~ department may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the applicant submitted pursuant to 9VAC25-31-100 L 2; or

2. A variance based on water quality related effluent limitations submitted pursuant to 9VAC25-31-100 L 3 or 9VAC25-31-100 M 2.

C. If the EPA Office Director for Wastewater Management approves the variance, the ~~board~~ department may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The ~~board~~ department may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D; or

2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-31-100 L 2 or 9VAC25-31-100 M 1.

E. If the administrator approves the variance, the ~~board~~ department may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

9VAC25-31-350. Appeals of variances.

When the ~~board~~ department issues a permit on which EPA has made a variance decision, separate appeals of the VPDES permit and of the EPA variance decision are possible.

9VAC25-31-370. Modification, revocation and reissuance, or termination of permits.

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the ~~board's~~ department's initiative. When the department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) it may determine whether or not one or more of the causes listed in this section for modification or revocation and reissuance, or both, exist. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 9VAC25-31-390 or 9VAC25-31-410. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the ~~board~~ department shall not modify, revoke and reissue or terminate the permit. If a permit modification satisfies the criteria for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part IV (9VAC25-31-260 et seq.) followed.

B. If the ~~board~~ department decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the ~~board~~ department tentatively decides to modify or revoke and reissue a permit, it shall prepare a draft permit incorporating the proposed changes. The ~~board~~ department may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the ~~board~~ department shall require the submission of a new application.

2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued and the permit is reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. Minor modifications as defined in 9VAC25-31-400 are not subject to the requirements of this section.

D. If the ~~board~~ department tentatively decides to terminate a permit under 9VAC25-31-410, where the permittee objects, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit.

9VAC25-31-380. Transfer of permits.

A. Except as provided in subsection B of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the law and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any VPDES permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

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

3. The ~~board~~ department does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date

specified in the agreement mentioned in subdivision 2 of this subsection; and

4. The new owner or operator has demonstrated compliance with 9VAC25-650-70, if applicable.

9VAC25-31-390. Modification or revocation and reissuance of permits.

A. Causes for modification. The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. The department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For VPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger VPDES permits this cause shall include any significant information derived from effluent testing required on the permit application after issuance of the permit.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations incorporated by reference in 9VAC25-31-30; and

(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(3) A permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of VPDES permits.

4. The ~~board~~ department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a VPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the permittee has filed a request for a variance pursuant to 9VAC25-31-100 L or M within the time specified in this chapter.

6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or prohibition.

7. When required by the reopener conditions in a permit which are established under 9VAC25-31-220 B or C or 9VAC25-31-800 E.

8. a. Upon request of a permittee who qualifies for effluent limitations on a net basis under 9VAC25-31-230 G.

b. When a discharger is no longer eligible for net limitations as provided in 9VAC25-31-230 G 1 b.

9. As necessary under 9VAC25-31-800 E for a pretreatment program.

10. Upon failure to notify another state whose waters may be affected by a discharge.

11. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

12. To establish a notification level as provided in 9VAC25-31-220 F.

13. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under § 202(a)(3) of the CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under § 202(a)(2) of the CWA. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

14. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

15. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the law and § 402(a)(1)

of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 9VAC25-31-410, and the ~~board~~ department determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

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

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

A. Correct typographical errors;

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

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

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

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

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

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

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

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

9VAC25-31-410. Termination of permits.

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

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

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

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

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

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

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

B. The ~~board~~ department shall follow the applicable procedures in this chapter in terminating any VPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the ~~board~~ department may terminate the permit by notice to the permittee. Termination by

notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the ~~board~~ department shall follow the applicable procedures for termination under 9VAC25-31-370 D. Expedited permit termination procedures are not available to permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

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

9VAC25-31-440. Permits and direct enforceability.

A. The requirements in this part may be implemented through a permit issued to a treatment works treating domestic sewage, in accordance with this chapter. Treatment works treating domestic sewage shall submit a permit application in accordance with this chapter.

B. No person shall use biosolids or dispose of sewage sludge through any practice for which requirements are established in this part except in accordance with such requirements.

C. No person shall land apply Class B biosolids on any land in Virginia unless that land has been identified in an application to issue, reissue, or modify a permit and approved by the ~~board~~ department.

D. No person shall land apply, market, or distribute biosolids in Virginia unless the biosolids source has been approved by the ~~board~~ department.

9VAC25-31-460. Additional or more stringent requirements.

A. On a case-by-case basis, the ~~board~~ department may impose requirements for the use of biosolids or disposal of sewage sludge in addition to or more stringent than the requirements in this part when necessary to protect public health and the environment from any adverse effect of a pollutant in the biosolids or sewage sludge.

B. Nothing in this part precludes the authority of another state agency, any political subdivision of Virginia, or an interstate agency with respect to the use of biosolids or disposal of sewage sludge.

C. For biosolids land application where, because of site-specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding setback distances, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

9VAC25-31-485. Requirements for a person who land apply biosolids.

A. No person shall land apply biosolids pursuant to a permit issued in accordance with this regulation unless an individual holding a valid certificate of competence as specified in the Virginia Pollution Abatement Permit Regulation, Article 5, Certification of Land Applicators, as set forth in 9VAC25-32-690 through 9VAC25-32-760, is onsite at all times during such land application.

B. When an application for a permit that authorizes the land application of biosolids is submitted to the department:

1. Permit holders shall use a DEQ control number, if previously assigned, identifying each land application field. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location.

2. A written agreement shall be established between the landowner and permit applicant or permit holder to be submitted with the permit application, whereby the landowner shall consent to the application of biosolids on his property. The landowner agreement shall include:

a. A statement certifying that the landowner is the sole owner or one of multiple owners of the property or properties identified on the landowner agreements;

b. A statement certifying that no concurrent agreements are in effect for the fields to be permitted for biosolids application;

c. An acknowledgement that the landowner shall notify the permittee when land is sold or ownership transferred;

d. An acknowledgement that the landowner shall notify the permittee if any conditions change such that any component of the landowner agreement becomes invalid;

e. Permission to allow department staff on the landowner's property to conduct inspections;

f. An acknowledgement by the landowner of any site restrictions identified in the regulation;

g. An acknowledgement that the landowner has received a biosolids fact sheet approved by the department; and

h. An acknowledgement that the landowner shall not remove notification signs placed by the permit holder.

3. New landowner agreements, using the most current form provided by the ~~board~~ department, shall be submitted to the department for proposed land application sites identified in each application for issuance or reissuance of a permit or the modification to add land to an existing permit that authorizes the land application of biosolids.

4. For permits modified in order to incorporate changes to this chapter, the permit holder shall, within 60 days of the effective date of the permit modification, advise the landowner by certified letter of the requirement to provide a new landowner agreement. The letter shall include instructions to the landowner for signing and returning the new landowner agreement and shall advise the landowner that the permit holder's receipt of such new landowner agreement is required prior to application of biosolids to the landowner's property.

5. The responsibility for obtaining and maintaining the agreements lies with the permit holder.

C. The permit holder shall ensure that the landowner agreement is still valid at the time of land application.

D. Notification requirements.

1. At least 100 days prior to commencing the first land application of biosolids at a permitted site the permittee shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the biosolids to be applied to the site. This requirement may be satisfied by the department's notice to the local government at the time of receiving the permit application if all necessary information is included in the notice or by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

2. At least 14 days prior to commencing land application of biosolids at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

3. Not more than 24 hours prior to commencing land application activities, including delivery of biosolids at a permitted site, the permittee shall notify in writing the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. This notification shall include identification of the biosolids source and shall include only sites where land application activities will commence within 24 hours or where the biosolids will be staged within 24 hours.

E. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

F. Posting signs.

1. At least five business days prior to delivery of biosolids for land application on any site permitted under this regulation, the permit holder shall post signs at the site that comply with this section, are visible and legible from the public right-of-way in both directions of travel, and conform to the specifications in this subsection. The sign shall remain in place for at least five business days after land application has been completed at the site. The permit holder shall not remove the signs until at least 30 days after land application has been completed at the site.

a. A sign shall be posted at or near the intersection of the public right-of-way and the main site access road or driveway to the site used by the biosolids transport vehicles.

b. If the field is located adjacent to a public right-of-way, at least one sign shall be posted along each public road frontage beside the field to be land applied.

c. The department may grant a waiver to the requirements in this section, or require alternative posting options due to extenuating circumstances or where requirements conflict with local government ordinances and other requirements regulating the use of signs.

2. Upon the posting of signs at a land application site prior to commencing land application, the permittee shall deliver or cause to be delivered written notification to the department and the chief executive officer or designee for the local government where the site is located unless they request in writing not to receive the notice. Notification shall be delivered to the department within 24 hours of the posting of the signs. The notice shall include the following:

a. The name and telephone number of the permit holder, including the name of a representative knowledgeable of the permit;

b. Identification by tax map number and the DEQ control number for sites on which land application is to take place;

c. The name or title and telephone number of at least one individual designated by the permit holder to respond to

questions and complaints related to the land application project if not the permit holder identified in subdivision a of this subdivision; and

d. The approximate dates on which land application is to begin and end at the site.

3. The sign shall be made of weather-resistant materials and shall be sturdily mounted so as to be capable of remaining in place and legible throughout the period that the sign is required at the site. Signs required by this section shall be temporary, nonilluminated, and four square feet or more in area, and only contain the following information:

a. A statement that biosolids are being land applied at the site;

b. The name of the permit holder;

c. The telephone number of an individual designated by the permit holder to respond to complaints and inquiries; and

d. Contact information for the department, including a telephone number for complaints and inquiries.

4. The permit holder shall make a good faith effort to replace or repair any sign that has been removed from a land application site or that has been damaged so as to render any of its required information illegible prior to five business days after completion of land application.

G. Biosolids management plan.

1. The permit holder shall maintain and implement a biosolids management plan, which shall consist of three components:

a. The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a site to the permit in accordance with 9VAC25-31-100 Q;

b. Nutrient management plan for each site, in accordance with 9VAC25-31-505; and

c. Operation and maintenance (O&M) manual, developed and submitted to the department within 90 days of the effective date of the permit.

2. The biosolids management plan and all of its components shall be incorporated as an enforceable part of the permit.

3. The O&M manual shall include at a minimum:

a. Equipment maintenance and calibration procedures and schedules;

b. Storage facility maintenance procedures and schedules;

c. Sampling schedules for:

(1) Required monitoring; and

(2) Operational control testing;

d. Sample collection, preservation and analysis procedures, including laboratories and methods used; and

e. Instructions for recording and reporting all monitoring activities.

4. Current VPDES permit holders who land apply biosolids may use their existing VPDES O&M plan addressing land application to satisfy the requirements of this section if the existing plan addresses all of the required minimum components identified in this section.

H. Handling of complaints.

1. Within 24 hours of receiving notification of a complaint, the permit holder shall commence investigation of the complaint and shall determine whether the complaint is substantive. The permit holder shall confirm receipt of all substantive complaints by phone, email, or facsimile to the department, the chief executive officer or designee for the local government of the jurisdiction in which the complaint originates, and the owner of the treatment facility from which the biosolids originated within 24 hours after receiving the complaint.

2. For the purposes of this section, a substantive complaint shall be deemed to be any complaint alleging a violation of these regulations, state law, or local ordinance; a release of biosolids to state waters or to a public right-of-way or to any location not authorized in the permit; or failure to comply with the nutrient management plan for the land application site.

9VAC25-31-500. Definitions.

In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the following definitions apply to Part VI (9VAC25-31-420 et seq.) of this chapter. Where the same term is defined in both parts, the definition of Part VI of this chapter applies to the use of the term in Part VI of this chapter.

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agronomic rate" means the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the biosolids that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

"Annual pollutant loading rate " or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

"Aquifer" means a geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

"Base flood" means a flood that has a one percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

"Class I sludge management facility" means any publicly owned treatment works (POTW) required to have an approved pretreatment program under this chapter and any treatment works treating domestic sewage classified as a Class I sludge management facility by the ~~board~~ department because of the potential for its biosolids use or sewage sludge disposal practice to affect public health and the environment adversely.

"Contaminate an aquifer" means to introduce a substance that causes the maximum contaminant level for nitrate in the Virginia Water Quality Standards or in 40 CFR 141.62(b) to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater exceeds the maximum contaminant level for nitrate in the Virginia Water Quality Standards or 40 CFR 141.62(b).

"Cover" means soil or other material used to cover sewage sludge placed on an active sewage sludge unit.

"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the biosolids or sewage sludge.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Dry tons" means dry weight established as representative of land applied biosolids and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge or biosolids after all moisture has been removed in accordance with the standard methods of testing and often represented as percent solids.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Fault" means a fracture or zone of fractures in any materials along which strata on one side are displaced with respect to strata on the other side.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops such as flax and cotton.

"Field" means an area of land within a site where land application is proposed or permitted.

"Final cover" means the last layer of soil or other material placed on a sewage sludge unit at closure.

"Food crops" means crops produced primarily for consumption by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

"Groundwater" means water below the land surface in the saturated zone.

"Holocene time" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene epoch to the present.

"Industrial wastewater" means wastewater generated in a commercial or industrial process.

"Land application" means in regard to biosolids, the distribution of biosolids by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing the crops and vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this chapter are not to be considered to be treatment works. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application. For the purpose of this chapter, the use of biosolids

in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback distances, where the biosolids may be applied.

"Land applier" means someone who land applies biosolids pursuant to a valid permit from the department as set forth in this chapter and 9VAC25-32-690 through 9VAC25-32-760.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Leachate collection system" means a system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sewage sludge unit.

"Liner" means soil or synthetic material that has a hydraulic conductivity of 1 X 10^{-7} centimeters per second or less.

"Local monitor" means a person or persons employed by a local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.19:3 of the Code of Virginia.

"Lower explosive limit for methane gas" means the lowest percentage of methane gas in air, by volume that propagates a flame at 25°C and atmospheric pressure.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency under § 208 of the CWA, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in § 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of biosolids or sewage sludge.

"Odor sensitive receptor" means, in the context of land application of biosolids, any health care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, or athletic and other recreational facilities.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Person who prepares biosolids" means either the person who generates biosolids during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Celsius or measured at another temperature and then converted to an equivalent value at 25° Celsius.

"Place sewage sludge or sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the ~~board~~ department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of biosolids (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, and golf courses.

"Qualified groundwater scientist" means an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in groundwater hydrology and related fields, as may be demonstrated by state registration, professional certification,

or completion of accredited university programs, to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.

"Range land" means open land with indigenous vegetation.

"Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Seismic impact zone" means an area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

"Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge unit boundary" means the outermost perimeter of an active sewage sludge unit.

"Site" means the area of land within a defined boundary where an activity is proposed or permitted.

"Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

"Store or storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried at 103°C to 105°C.

"Treat or treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

"Unstable area" means land subject to natural or human-induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Use" means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

"Vector attraction" means the characteristic of biosolids or sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

9VAC25-31-505. Universal requirements for land application operations.

A. A nutrient management plan prepared by a person who is certified as a nutrient management planner by the Department of Conservation and Recreation shall be developed for all application sites prior to biosolids land application.

1. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to ~~board~~ department authorization under specific conditions, including but not limited to:

a. Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

b. Sites where land application more frequently than once every three years at greater than 50% of the annual agronomic rate is proposed;

c. Mined or disturbed land sites where land application is proposed at greater than agronomic rates; and

d. Other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

e. Where conditions at the land application site change so that it meets one or more of the specific conditions identified in this section, an approved nutrient management plan shall be submitted prior to any future land application at the site.

2. The nutrient management plan shall be available for review by the department at the land application site during biosolids land application.

3. Within 30 days after land application at the site has commenced, the permit holder shall provide a copy of the nutrient management plan to the farm operator of the site, the Department of Conservation and Recreation, and the chief executive officer or designee for the local government unless they request in writing not to receive the nutrient management plan.

4. The nutrient management plan must be approved by the Department of Conservation and Recreation prior to land application for land application sites where the soil test phosphorus levels exceed the values in Table 1 of this section. For purposes of approval, permittees should submit the nutrient management plan to the Department of Conservation and Recreation at least 30 days prior to the anticipated date of land application to ensure adequate time for the approval process.

TABLE 1
SOIL PHOSPHORUS LEVELS REQUIRING NMP APPROVAL

Region	Soil Test P (ppm) VPI & SU 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.	

B. Sewage sludge shall be treated to meet standards for land application of biosolids as required by Part VI (9VAC25-31-420 et seq.) of this chapter prior to delivery at the land application site. No person shall alter the composition of biosolids at a site approved for land application of biosolids under a VPDES permit. Any person who engages in the alteration of such biosolids shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The addition of lime or deodorants to biosolids that have been treated to meet standards for land application as required by Part VI (9VAC25-31-420 et seq.) of this chapter, shall not constitute alteration of the composition of biosolids. The ~~board~~ department may authorize public institutions of higher education to conduct scientific research on the composition of biosolids that may be applied to land.

C. Bulk biosolids meeting Class B pathogen reduction standards shall be land applied in accordance with the Virginia Pollution Abatement Permit Regulation, Article 3, Biosolids Use Standards and Practices, set forth in 9VAC25-32-490 through 9VAC25-32-580.

D. Surface incorporation may be required on cropland by the department, or the local monitor with approval of the department, to mitigate malodors, when incorporation is practicable and compatible with a soil conservation plan or contract meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

E. For applications where surface applied biosolids are not incorporated, the department (or the local monitor with approval of the department) may require as a site-specific permit condition, extended setback distances when necessary to protect odor sensitive receptors.

F. No person shall apply to the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing storage of sewage sludge or biosolids without first complying with all requirements adopted pursuant to § 62.1-44.19:3 R of the Code of Virginia.

9VAC25-31-510. Applicability; bulk biosolids; biosolids sold or given away in a bag or other container for application to the land.

A. This article applies to any person who prepares biosolids that is applied to the land, to any person who applies biosolids to the land, to biosolids applied to the land, and to the land on which biosolids is applied.

B. General requirements for bulk biosolids.

1. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 B through F do not apply when bulk biosolids is applied to the land if the bulk biosolids meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

2. The ~~board~~ department may apply any or all of the general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 to the bulk biosolids in subdivision 1 of this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk biosolids.

C. General requirements for bulk material derived from biosolids.

1. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 B through F do

not apply when a bulk material derived from biosolids is applied to the land if the derived bulk material meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

2. The ~~board~~ department may apply any or all of the general requirements in 9VAC25-31-530 or the management practices in 9VAC25-31-550 to the bulk material in subdivision 1 of this subsection on a case-by-case basis after determining that the general requirements or management practices are needed to protect public health and the environment from any reasonably anticipated adverse effect that may occur from any pollutant in the bulk biosolids.

D. The requirements in this article do not apply when a bulk material derived from biosolids is applied to the land if the biosolids from which the bulk material is derived meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

E. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 B through F do not apply when biosolids is sold or given away in a bag or other container for application to the land if the biosolids sold or given away in a bag or other container for application to the land meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

F. The general requirements in 9VAC25-31-530 and the management practices in 9VAC25-31-550 B through F do not apply when a material derived from biosolids is sold or given away in a bag or other container for application to the land if the derived material meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

G. The requirements in this article do not apply when a material derived from biosolids is sold or given away in a bag or other container for application to the land if the biosolids from which the material is derived meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 8.

9VAC25-31-550. Management practices.

A. All biosolids land application activities shall comply with the operational requirements of Part IX (9VAC25-32-303 et seq.) of 9VAC25-32 (Biosolids Program of the VPA Permit Regulation).

B. Bulk biosolids shall not be applied to the land if it is likely to adversely affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC § 1533) or if the land application is likely to adversely affect its designated critical habitat.

C. Bulk biosolids shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk biosolids enters a wetland or other surface waters except as provided in a VPDES permit or a permit issued pursuant to § 404 of the CWA.

D. Bulk biosolids shall not be applied to agricultural land, forest, or a reclamation site that is 10 meters or less from surface waters, unless otherwise specified by the ~~board~~ department.

E. Bulk biosolids shall be applied to agricultural land, forest, a public contact site, or a reclamation site at a whole sludge application rate that is equal to or less than the agronomic rate for the bulk biosolids, unless, in the case of a reclamation site, otherwise specified by the ~~board~~ department.

F. Either a label shall be affixed to the bag or other container in which biosolids that is sold or given away for application to the land, or an information sheet shall be provided to the person who receives biosolids sold or given away in a bag or other container for application to the land. The label or information sheet shall contain the following information:

1. The name and address of the person who prepared the biosolids that is sold or given away in a bag or other container for application to the land;

2. A statement that application of the biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet; and

3. The annual whole sludge application rate for the biosolids that does not cause any of the annual pollutant loading rates in Table 4 of 9VAC25-31-540 to be exceeded.

9VAC25-31-570. Frequency of monitoring.

A. Biosolids.

1. The frequency of monitoring for the pollutants listed in Tables 1 through 4 of 9VAC25-31-540; the pathogen density requirements in 9VAC25-31-710 A and B 2 through B 4; and the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 4, B 7 and B 8 shall be the frequency in Table 1 of this section.

TABLE 1 FREQUENCY OF MONITORING--LAND APPLICATION	
Amount of biosolids* (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	once per year
Equal to or greater than 290 but less than 1,500	once per quarter (four times a year)
Equal to or greater than 1,500 but less than 15,000	once per 60 days (six times per year)
Equal to or greater than 15,000	once per month (12 times per year)
*Either the amount of bulk biosolids applied to the land or the amount of biosolids prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).	

2. After the biosolids has been monitored for two years at the frequency in Table 1 of this section, the ~~board~~ department may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9VAC25-31-710 A 5 b and c.

B. Domestic septage. If either the pathogen requirements in 9VAC25-31-710 C 2 or the vector attraction reduction requirements in 9VAC25-31-720 B 12 are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each container of domestic septage applied to the land shall be monitored for compliance with those requirements.

9VAC25-31-620. General requirements.

A. No person shall place sewage sludge on an active sewage sludge unit unless the requirements in this article are met.

B. An active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time; located in an unstable area; or located in a wetland, except as provided in a permit issued pursuant to the law and § 402 or 404 of the CWA, shall close by March 22, 1994, unless, in the case of an active sewage sludge unit located within 60 meters of a fault that has displacement in Holocene time, otherwise specified by the ~~board~~ department.

C. The owner/operator of an active sewage sludge unit shall submit a written closure and post closure plan to the department 180 days prior to the date that the active sewage sludge unit closes. The plan shall describe how the sewage sludge unit will be closed and, at a minimum, shall include:

1. A discussion of how the leachate collection system will be operated and maintained for three years after the sewage sludge unit closes if the sewage sludge unit has a liner and leachate collection system;

2. A description of the system used to monitor for methane gas in the air in any structures within the surface disposal site and in the air at the property line of the surface disposal site, as required in 9VAC25-31-640 J 2; and

3. A discussion of how public access to the surface disposal site will be restricted for three years after the last sewage sludge unit in the surface disposal site closes.

D. The owner of a surface disposal site shall provide written notification to the subsequent owner of the site that sewage sludge was placed on the land.

9VAC25-31-630. Pollutant limits (other than domestic septage).

A. Active sewage sludge unit without a liner and leachate collection system.

1. Except as provided in subdivision A 2 and subsection B of this section, the concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit shall not exceed the concentration for the pollutant in Table 1 of this section.

TABLE 1. POLLUTANT CONCENTRATIONS--ACTIVE SEWAGE SLUDGE UNIT WITHOUT A LINER AND LEACHATE COLLECTION	
Pollutant Concentration	Concentration (milligrams per kilogram*)
Arsenic	73
Chromium	600
Nickel	420
*Dry weight basis	

2. Except as provided in subsection B of this section, the concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit whose boundary is less than 150 meters from the property line of the surface disposal site shall not exceed the concentration determined using the following procedure.

a. The actual distance from the active sewage sludge unit boundary to the property line of the surface disposal site shall be determined.

b. The concentration of each pollutant listed in Table 2 of this section in the sewage sludge shall not exceed the concentration in Table 2 of this section that corresponds to the actual distance in subdivision 2 a of this subsection.

TABLE 2--POLLUTANT CONCENTRATIONS ACTIVE SEWAGE SLUDGE UNIT WITHOUT A LINER AND LEACHATE COLLECTION SYSTEM THAT HAS A UNIT BOUNDARY TO PROPERTY LINE DISTANCE LESS THAN 150 METERS			
Unit boundary to property line	Pollutant concentration*		
Distance (meters)	Arsenic (mg/kg)	Chromium (mg/kg)	Nickel (mg/kg)
0 to less than 25	30	200	210
25 to less than 50	34	220	240
50 to less than 75	39	260	270
75 to less than 100	46	300	320
100 to less than 125	53	360	390
125 to less than 150	62	450	420
*Dry weight basis			

B. Active sewage sludge unit without a liner and leachate collection system - site-specific limits.

1. At the time of permit application, the owner/operator of a surface disposal site may request site-specific pollutant limits in accordance with subdivision B 2 of this section for an active sewage sludge unit without a liner and leachate collection system when the existing values for site parameters specified by the ~~board~~ department are different from the values for those parameters used to develop the pollutant limits in Table 1 of this section and when the ~~board~~ department determines that site-specific pollutant limits are appropriate for the active sewage sludge unit.

2. The concentration of each pollutant listed in Table 1 of this section in sewage sludge placed on an active sewage sludge unit without a liner and leachate collection system shall not exceed either the concentration for the pollutant determined during a site-specific assessment, as specified by the ~~board~~ department, or the existing concentration of the pollutant in the sewage sludge, whichever is lower.

9VAC25-31-640. Management practices.

A. Sewage sludge shall not be placed on an active sewage sludge unit if it is likely to adversely affect a threatened or endangered species listed in 9VAC25-260-320 or § 4 of the Endangered Species Act (16 USC § 1533 et seq.) or its designated critical habitat.

B. An active sewage sludge unit shall not restrict the flow of a base flood.

C. When a surface disposal site is located in a seismic impact zone, an active sewage sludge unit shall be designed to withstand the maximum recorded horizontal ground level acceleration.

D. An active sewage sludge unit shall be located 60 meters or more from a fault that has displacement in Holocene time, unless otherwise specified by the ~~board~~ department.

E. An active sewage sludge unit shall not be located in an unstable area.

F. An active sewage sludge unit shall not be located in a wetland, except as provided in a permit issued by the ~~board~~ department.

G. 1. Run-off from an active sewage sludge unit shall be collected and shall be disposed in accordance with this chapter and any other applicable requirements.

2. The run-off collection system for an active sewage sludge unit shall have the capacity to handle run-off from a 24-hour, 25-year storm event.

H. The leachate collection system for an active sewage sludge unit that has a liner and leachate collection system shall be operated and maintained during the period the sewage sludge unit is active and for three years after the sewage sludge unit closes.

I. Leachate from an active sewage sludge unit that has a liner and leachate collection system shall be collected and shall be disposed in accordance with the applicable requirements during the period the sewage sludge unit is active and for three years after the sewage sludge unit closes.

J. When a cover is placed on an active sewage sludge unit, the concentration of methane gas in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive limit for methane gas during the period that the sewage sludge unit is active and the concentration of methane gas in air at the property line of the surface disposal site shall not exceed the lower explosive limit for methane gas during the period that the sewage sludge unit is active.

When a final cover is placed on a sewage sludge unit at closure, the concentration of methane gas in air in any structure within the surface disposal site shall not exceed 25% of the lower explosive limit for methane gas for three years after the sewage sludge unit closes and the concentration of methane gas

in air at the property line of the surface disposal site shall not exceed the lower explosive limit for methane gas for three years after the sewage sludge unit closes, unless otherwise specified by the ~~board~~ department.

K. A food crop, a feed crop, or a fiber crop shall not be grown on an active sewage sludge unit unless the owner/operator of the surface disposal site demonstrates to the ~~board~~ department that through management practices, public health and the environment are protected from any reasonably anticipated adverse effects of pollutants in sewage sludge when crops are grown.

L. Animals shall not be grazed on an active sewage sludge unit unless the owner/operator of the surface disposal site demonstrates to the ~~board~~ department that through management practices, public health and the environment are protected from any reasonably anticipated adverse effects of pollutants in sewage sludge when animals are grazed.

M. Public access to a surface disposal site shall be restricted for the period that the surface disposal site contains an active sewage sludge unit and for three years after the last active sewage sludge unit in the surface disposal site closes.

N. Sewage sludge placed on an active sewage sludge unit shall not contaminate an aquifer. Results of a groundwater monitoring program developed by a qualified groundwater scientist or a certification by a qualified groundwater scientist shall be used to demonstrate that sewage sludge placed on an active sewage sludge unit does not contaminate an aquifer.

9VAC25-31-660. Frequency of monitoring.

A. Sewage sludge (other than domestic septage).

1. The frequency of monitoring for the pollutants in Tables 1 and 2 of 9VAC25-31-630; the pathogen density requirements in 9VAC25-31-710 A and in 9VAC25-31-710 B 2; and the vector attraction reduction requirements in 9VAC25-31-720 B 1 through B 4, B 7 and B 8 for sewage sludge placed on an active sewage sludge unit shall be the frequency in Table 1 of this section.

TABLE 1

FREQUENCY OF MONITORING--SURFACE DISPOSAL

Amount of sewage sludge* (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	once per year
Equal to or greater than 290 but less than 1,500	once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	once per 60 days (six times per year)
Equal to or greater than 15,000	once per month (12 times per year)

*Amount of sewage sludge placed on an active sewage sludge unit (dry weight basis).

2. After the sewage sludge has been monitored for two years at the frequency in Table 1 of this section, the ~~board~~ department may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9VAC25-31-710 A 5 b and c.

B. Domestic septage. If the vector attraction reduction requirements in 9VAC25-31-720 B 12 are met when domestic septage is placed on an active sewage sludge unit, each container of domestic septage shall be monitored for compliance with those requirements.

C. Air. Air in structures within a surface disposal site and at the property line of the surface disposal site shall be monitored continuously for methane gas during the period that the surface disposal site contains an active sewage sludge unit on which the sewage sludge is covered and for three years after a sewage sludge unit closes when a final cover is placed on the sewage sludge.

9VAC25-31-710. Pathogens.

A. Biosolids - Class A.

1. The requirement in subdivision 2 of this subsection and the requirements in either subdivisions 3, 4, 5, 6, 7, or 8 of this subsection shall be met for a biosolids to be classified Class A with respect to pathogens.

2. The Class A pathogen requirements in subdivisions 3 through 8 of this subsection shall be met either prior to meeting or at the same time the vector attraction reduction requirements in 9VAC25-31-720, except the vector attraction reduction requirements in 9VAC25-31-720 B 6 through B 8, are met.

3. Class A - Alternative 1.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. The temperature of the sewage sludge that is used or disposed shall be maintained at a specific value for a period of time.

(1) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using equation (1), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

EQUATION (1)
$D = 131{,}700{,}000/10^{0.1400t}$
D = time in days
t = temperature in degrees Celsius

(2) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation (1).

(3) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (1).

(4) When the percent solids of the sewage sludge is less than 7.0%; the temperature of the sewage sludge is 50°C or higher; and the time period is 30 minutes or longer, the temperature and time period shall be determined using equation (2).

EQUATION (2)
$D = 50{,}070{,}000/10^{0.1400t}$
D = time in days
t = temperature in degrees Celsius

4. Class A - Alternative 2.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. (1) The pH of the sewage sludge that is used or disposed shall be raised to above 12 and shall remain above 12 for 72 hours.

(2) The temperature of the sewage sludge shall be above 52°C for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(3) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

5. Class A - Alternative 3.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(2) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(3) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(4) After the enteric virus reduction in subdivision 5 b (3) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 b (3) of this subsection.

c. (1) The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(2) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge

is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(3) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(4) After the viable helminth ova reduction in subdivision 5 c (3) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 c (3) of this subsection.

6. Class A - Alternative 4.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. The density of enteric viruses in the biosolids shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F, unless otherwise specified by the ~~board~~ department.

c. The density of viable helminth ova in the biosolids shall be less than one per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F unless otherwise specified by the ~~board~~ department.

7. Class A - Alternative 5.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella, sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. Biosolids that is used or disposed shall be treated in one of the processes to further reduce pathogens described in subsection E of this section.

8. Class A - Alternative 6.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella, sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or give away in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the requirements in 9VAC25-31-510 B, C, E, or F.

b. Biosolids that is used or disposed shall be treated in a process that is equivalent to a process to further reduce pathogens, as determined by the ~~board~~ department.

B. Biosolids - Class B.

1. The requirements in either subdivision 3, 4, or 5 of this subsection shall be met for a biosolids to be classified Class B with respect to pathogens.

2. The site restrictions in subdivision 6 of this subsection shall be met when biosolids that meets the Class B pathogen requirements in subdivision 3, 4, or 5 of this subsection is applied to the land.

3. Class B - Alternative 1.

a. Seven representative samples of the biosolids that is used or disposed shall be collected.

b. The geometric mean of the density of fecal coliform in the samples collected in subdivision 3 a of this subsection shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

4. Class B - Alternative 2. Biosolids that is used or disposed shall be treated in one of the processes to significantly reduce pathogens described in subsection D of this section.

5. Class B - Alternative 3. Biosolids that is used or disposed shall be treated in a process that is equivalent to a process to significantly reduce pathogens, as determined by the ~~board~~ department.

6. Site restrictions.

a. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of biosolids.

b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of biosolids when the biosolids remains on the land surface for four months or longer prior to incorporation into the soil.

c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of biosolids when the biosolids remains on the land surface for less than four months prior to incorporation into the soil.

d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of biosolids.

e. Animals shall not be grazed on the land for 30 days after application of biosolids.

f. Turf grown on land where biosolids is applied shall not be harvested for one year after application of the biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the ~~board~~ department.

g. Public access to land with a high potential for public exposure shall be restricted for one year after application of biosolids.

h. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of biosolids.

C. Domestic septage: The site restrictions in subdivision B 6 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

D. Processes to significantly reduce pathogens (PSRP).

1. Aerobic digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. Air drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. Anaerobic digestion. Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35°C to 55°C and 60 days at 20°C.

4. Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. Lime stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

E. Processes to further reduce pathogens (PFRP).

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10.0% or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. Thermophilic aerobic digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55°C to 60°C.

5. Beta ray irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

9VAC25-31-720. Vector attraction reduction.

A. Vector attraction reduction requirements:

1. One of the vector attraction reduction requirements in subdivisions B 1 through B 10 of this section shall be met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site.

2. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when bulk biosolids is applied to a lawn or a home garden.

3. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met

when biosolids is sold or given away in a bag or other container for application to the land.

4. One of the vector attraction reduction requirements in subdivisions B 1 through B 11 of this section shall be met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit.

5. One of the vector attraction reduction requirements in subdivision B 9, B 10, or B 12 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site and one of the vector attraction reduction requirements in subdivisions B 9 through B 12 of this section shall be met when domestic septage is placed on an active sewage sludge unit.

B. Vector attraction reduction options:

1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%, calculated according to the method in 9VAC25-31-490 B 8.

2. When the 38% volatile solids reduction requirement in subdivision 1 of this subsection cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17%, vector attraction reduction is achieved.

3. When the 38% volatile solids reduction requirement in subdivision 1 of this section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15%, vector attraction reduction is achieved.

4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C.

6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

7. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

9. Sewage sludge injection requirements:

a. Sewage sludge shall be injected below the surface of the land.

b. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

c. When the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

10. Sewage sludge incorporation requirements:

a. Sewage sludge applied to the land surface or placed on an active sewage sludge unit shall be incorporated into the soil within six hours after application to or placement on the land, unless otherwise specified by the ~~board~~ department.

b. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or other material at the end of each operating day.

12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.

9VAC25-31-910. Enforcement.

A. The ~~board~~ department may enforce the provisions of this chapter by:

1. Issuing directives in accordance with the law;

2. Issuing special orders in accordance with the law;

3. Issuing emergency special orders in accordance with the law;

4. Seeking injunction, mandamus or other appropriate remedy as authorized by the law;

5. Seeking civil penalties under the law; or

6. Seeking remedies under the law, the CWA or under other laws including the common law.

B. The ~~board~~ department encourages citizen participation in all its activities, including enforcement. In particular:

1. The ~~board~~ department will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the ~~board's~~ department's purview;

2. The ~~board~~ department will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule; or in any administrative enforcement action when authorized by the board's procedural rule; and

3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the ~~board~~ department will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the discharge is located, and in The Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. Appeals of the enforcement action will be public noticed in accordance with Procedural Rule No. 1 (9VAC25-230-10 et seq.). A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The ~~board~~ department shall consider all comments received during the comment period before taking final action.

C. When a permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

a. The permit amendment does not have to go to public notice; and

b. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by ~~agreement at a board meeting~~ the department without further notice when a public hearing has been scheduled to issue a special order to the affected owner, whether or not the public hearing is actually held.

9VAC25-31-920. ~~Delegation of authority.~~ (Repealed.)

~~The director may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia. Until March 23, 2000, the director shall have no authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal; until that time, such authority is delegated to the deputy director or his designee.~~

VA.R. Doc. No. R23-7260; Filed September 9, 2022, 2:22 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-110. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (amending 9VAC25-110-10, 9VAC25-110-20).**

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

Effective Date: November 9, 2022.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2666, FAX (804) 698-4178, or email peter.sherman@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-110-10. Definitions.

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

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

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

"Combined application" means the Virginia Department of Health Discharging System Application for Single Family

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

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

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

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

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

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

"VDH" means the Virginia Department of Health.

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

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

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

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

VA.R. Doc. No. R23-7263; Filed September 9, 2022, 2:25 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-115. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (amending 9VAC25-115-10, 9VAC25-115-20).**

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

Effective Date: November 9, 2022.

Agency Contact: Elleanore Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, FAX (804) 698-4178, or email elleanore.daub@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-115-10. Definitions.

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

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

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

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

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

"Department" means the Department of Environmental Quality.

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

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

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

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

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

"Seafood processing facility" means any facility that processes or handles seafood intended for human consumption or as bait, except a mechanized clam facility, where the primary purpose is classified under the following NAICS and SIC codes:

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

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

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

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

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

"Significant materials" includes raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production (except oyster, clam or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, byproduct, or waste product (except for oyster, clam or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities, including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the "industrial activity" definition, include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or A 7 a (1) or (2) of the VPDES Permit Regulation.

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

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is

based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

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

A. This general permit regulation governs the discharge of wastewater from seafood processing facilities and stormwater associated with industrial activity from seafood processing facilities classified NAICS Code 311710 and as SIC Codes 2091 and 2092.

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

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

VA.R. Doc. No. R23-7264; Filed September 9, 2022, 5:08 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-120. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests (amending 9VAC25-120-10; repealing 9VAC25-120-40).**

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

Effective Date: November 9, 2022.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2666, FAX (804) 698-4178, or email peter.sherman@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-120-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9VAC25-31 (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

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

"Central wastewater treatment facilities" means any facility that treats (for disposal, recycling, or recovery of materials) or recycles hazardous or nonhazardous waste, hazardous or nonhazardous industrial wastewater, or used material from off-site. This includes both a facility that treats waste received from off-site exclusively, and a facility that treats waste generated on-site as well as waste received from off-site.

"Chlorinated hydrocarbon solvents" means solvents containing carbon, hydrogen, and chlorine atoms and the constituents resulting from the degradation of chlorinated hydrocarbon solvents.

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

"Director" means the Director of the Virginia Department of Environmental Quality, or an authorized representative.

"Petroleum products" means petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. "Petroleum products" does not include hazardous waste as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

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

9VAC25-120-40. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7265; Filed September 9, 2022, 2:26 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (amending 9VAC25-151-10; repealing 9VAC25-151-30).**

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

Effective Date: November 9, 2022.

Agency Contact: Joseph Bryan, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2659, FAX (804) 698-4178, or email joseph.bryan@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-151-10. 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 VPDES Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

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

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

"Closed landfill" means a landfill that, on a permanent basis, will no longer receive waste and has completed closure in accordance with applicable federal, state, or local requirements.

"Coal pile runoff" means the rainfall runoff from or through any coal storage pile.

"Colocated industrial activity" means any industrial activity, excluding the facility's primary industrial activity, located on-site that meets the description of a category included in the "industrial activity" definition. An activity at a facility is not considered colocated if the activity, when considered separately, does not meet the description of a category included in the "industrial activity" definition or identified by the Standard Industrial Classification (SIC) code list in Table 50-2 in 9VAC25-151-50.

"Commercial treatment and disposal facilities" means facilities that receive, on a commercial basis, any produced hazardous waste (not their own) and treat or dispose of those wastes as a service to the generators. Such facilities treating or disposing exclusively residential hazardous wastes are not included in this definition.

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

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

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

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Existing discharger" means an operator applying for coverage under this permit for discharges authorized previously under a VPDES general or individual permit.

"Impaired water" means, for purposes of this chapter, a water that has been identified by Virginia pursuant to § 303(d) of the Clean Water Act as not meeting applicable water quality standards (these waters are called "water quality limited segments" under 40 CFR 30.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

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

"Industrial activity" - the following categories of facilities are considered to be engaging in "industrial activity":

1. Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category 10 of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner or operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition, and debris or wastes from VPDES regulated construction activities or sites), including those that are subject to regulation under Subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification Codes 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC Codes 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under categories 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved publicly owned treatment works (POTW) pretreatment program under 9VAC25-31. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 9VAC25-31-420 through 9VAC25-31- 720; and

10. Facilities under SIC Codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987).

"Industrial stormwater" means stormwater runoff from industrial activity.

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

"Measurable storm event" means a storm event that results in a discharge from an outfall.

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

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act that discharges to

surface waters of the state; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a POTW.

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

"Primary industrial activity" includes any activities performed on-site which are:

1. Identified by the facility's primary SIC code; or

2. Included in the narrative descriptions of the definition of "industrial activity."

Narrative descriptions in the "industrial activity" definition include: category 1 activities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; category 4 hazardous waste treatment storage or disposal facilities, including those that are operating under interim status or a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA); category 5 landfills, land application sites, and open dumps that receive or have received industrial wastes; category 7 steam electric power generating facilities; and category 9 sewage treatment works with a design flow of 1.0 mgd or more.

For colocated activities covered by multiple SIC codes, the primary industrial determination should be based on the value of receipts or revenues, or, if such information is not available for a particular facility, the number of employees or production rate for each process may be compared. The operation that generates the most revenue or employs the most personnel is the operation in which the facility is primarily engaged. In situations where the vast majority of on-site activity falls within one SIC code, that activity may be the primary industrial activity.

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

"Significant materials" includes raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the facility is required to report pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) § 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Significant spills" includes releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of CERCLA (see 40 CFR 302.4).

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities include those that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the "industrial activity" definition. The term also includes those facilities designated under the provisions of 9VAC25-31-120 A 1 c, or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation.

"SWPPP" means stormwater pollution prevention plan.

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

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for

program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

"Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

9VAC25-151-30. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7266; Filed September 9, 2022, 2:26 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (amending 9VAC25-190-10, 9VAC25-190-20).**

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

Effective Date: November 9, 2022.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 695-2666, FAX (804) 698-4178, or email peter.sherman@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-190-10. Definitions.

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

"Best management practices" or "BMPs" means schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

"Colocated facility" means an industrial activity other than mineral mining operating on a site where the primary industrial activity is mineral mining. Such an activity must have wastewater characteristics similar to those of the mineral mine and be located within the permitted mining area. The term refers to activities that are commonly found at mining sites such as manufacturing of ready-mix concrete (SIC Code 3273, NAICS Code 327320), concrete products (SIC Codes 3271 and 3272, NAICS Codes 327331, 327332, and 327390), and asphalt paving materials (SIC Code 2951, NAICS Code 324121) except asphalt emulsion manufacturing. It does not mean industrial activity that is specifically excluded from this permit.

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

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

"Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner or operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

"Industrial activity" means activity associated with mineral mining facilities generally identified by SIC Major Group 14 including active or inactive mining operations that discharge stormwater that has come into contact with any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations. This includes activity at facilities or those portions of a facility where the primary purpose is classified as:

1. North American Industry Classification System (NAICS) Code 212311 - Dimension Stone Mining and Quarrying, and Standard Industrial Classification (SIC) Code 1411 - Dimension Stone;

2. NAICS Code 212312 - Crushed and Broken Limestone Mining and Quarrying, and SIC Code 1422 Crushed and Broken Limestone;

3. NAICS Code 212313 - Crushed and Broken Granite Mining and Quarrying, and SIC Code 1423 -Crushed and Broken Granite;

4. NAICS Code 212319 - Crushed and Broken Stone not elsewhere classified (NEC), and SIC Code 1429 Crushed and Broken Stone NEC;

5. NAICS Code 212321 - Construction Sand and Gravel, and SIC Code 1442 - Construction Sand and Gravel;

6. NAICS Code 212324 - Kaolin and Ball Clay Mining, and SIC Code 1455 - Kaolin and Ball Clay;

7. NAICS Code 212325 - Clay and Ceramic and Refractory Minerals Mining, and SIC Code 1459 -Clay and Related Minerals, NEC (excluding for purposes of both NAICS and SIC bentonite and magnesite mines);

8. NAICS Code 212392 - Phosphate Rock Mining, and SIC Code 1475 - Phosphate Rock; and

9. NAICS Codes 212399 - All Other Nonmetallic Mineral Mining, and SIC Code 1499 - Miscellaneous Nonmetallic Minerals, except fuels (excluding for purposes of both NAICS and SIC gypsum, graphite, asbestos, diatomite, jade, novaculite, wollastonite, Tripoli, or asphaltic mineral mines).

Industrial activity also includes facilities classified under other SIC codes that may be colocated within the mineral mine permit area, unless they are expressly excluded by this general permit.

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

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains (i) owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act that discharges to surface waters of the state; (ii) designed or used for collecting or conveying stormwater; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

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

"Permittee" means the owner of a nonmetallic mineral mine covered under this general permit.

"Process wastewater" means any wastewater used in the slurry transport of mined material, air emissions control, or processing exclusive of mining, and any other water that becomes commingled with such wastewater in a pit, pond, lagoon, mine, or other facility used for treatment of such wastewater. It includes mine pit dewatering, water used in the process of washing stone, noncontact cooling water, wastewater from vehicle or equipment degreasing activities, vehicle washing and return water from operations where mined material is dredged and miscellaneous plant cleanup wastewaters.

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

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

"Significant materials" includes raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials; hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the owner is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11001 et seq.); fertilizers; pesticides; and waste products such as ashes, slag and sludge (including pond sediments) that have the potential to be released with stormwater discharges.

"Significant spills" includes releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.) (see 40 CFR 302.4).

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste

material, or by-products used or created by the mineral mine; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas.

"Temporarily inactive mineral mining facility" means a site or portion of a site where nonmetallic mineral mining or milling occurred in the past but currently is not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable state or federal agency.

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

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

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

9VAC25-190-20. Purpose; ~~delegation of authority;~~ effective date of permit.

A. The purpose of this chapter is to establish General Permit Number VAG84 to regulate wastewater and stormwater discharges to surface waters from nonmetallic mineral mines as follows:

1. For active and inactive nonmetallic mineral mining facilities in SIC Major Group 14, this general permit covers discharges composed entirely of stormwater associated with industrial activity.

2. This general permit authorizes the discharge of process wastewater as well as stormwater associated with industrial activity from active and inactive mineral mines classified under:

a. SIC Code 1411 - NAICS Code 212311,

b. SIC Code 1422 - NAICS Code 212312,

c. SIC Code 1423 - NAICS Code 212313,

d. SIC Code 1429 - NAICS Code 212319,

e. SIC Code 1442 - NAICS Code 212321,

f. SIC Code 1455 - NAICS Code 212324,

g. SIC Code 1459 - NAICS Code 212325, excluding bentonite and magnesite mines,

h. SIC Code 1475 - NACIS Code 212392, and

i. SIC Code 1499 - NAICS Code 212399, excluding gypsum, graphite, asbestos, diatomite, jade, novaculite, wollastonite, tripoli or asphaltic mineral mines.

3. Coal mining, metal mining, and oil and gas extraction are not covered by this general permit.

B. ~~The director, or an authorized representative, 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 July 1, 2019, and will expire June 30, 2024. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-190-50 and the receipt of this general permit.

VA.R. Doc. No. R23-7267; Filed September 9, 2022, 2:27 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-191. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations (repealing 9VAC25-191-10 through 9VAC25-191-50).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1 of the Code of Virginia; 40 CFR Parts 9, 122, 123, and 412.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 9, 2022.

Effective Date: November 24, 2022.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1913, FAX (804) 698-4032, or email betsy.bowles@deq.virginia.gov.

Basis: The basis for this regulation is § 62.1-44.15 of the Code of Virginia, which authorizes the board to issue permits for the

discharge of treated sewage, industrial wastes, or other waste into or adjacent to state waters; to adopt rules governing the procedures with respect to the issuance of permits; to adopt such regulations as it deems necessary to enforce the general water quality management program; and to establish requirements for the treatment of sewage, industrial wastes, and other wastes. Section 62.1-44.17 of the Code of Virginia specifies the board has authority to regulate discharges of other wastes. Section 62.1-44.20 of the Code of Virginia provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 of the Code of Virginia authorizes the board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES) program. Operations that meet the federal definition of a concentrated animal feeding operation (CAFO) found in 40 CFR 122.23 must seek coverage under a NPDES permit if the operation discharges. CAFOs are currently regulated in Virginia under the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192); the VPA regulation and General Permit for Poultry Waste Management (9VAC25-630); and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). CAFOs that discharge are required to obtain an individual VPDES permit under the authority of the VPDES regulation.

Purpose: Repealing this regulation will eliminate confusion as to the mechanism (individual permit versus general permit) that is being used to implement the requirements under the VPDES program that must be adhered to by an owner of a CAFO that discharges. This general permit expired December 31, 2010, and has not been reissued. This general permit regulation does not allow the board to provide the public notice opportunities as required by the federal CAFO rule. CAFOs instead are now regulated under Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). A VPDES individual permit is issued to any livestock or poultry CAFO that meets the discharge criteria; the individual permit process provides the public notice opportunities as required by the federal CAFO rule. This general permit regulation is being repealed as it is no longer needed for the protection of public health, safety, or welfare. The activities previously regulated by this regulation are regulated using other regulations.

Rationale for Using Fast-Track Rulemaking Process: Repealing this regulation using the fast-track rulemaking process will not be controversial because the general permit associated with this regulation is expired, and no activities are currently covered by this regulation. CAFOs are regulated under Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31); an individual permit is issued to cover any livestock or poultry CAFO that meets the discharge criteria. Any animal feeding operation (AFO) or CAFO that does not discharge is also regulated under the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) or the VPA regulation and General Permit for Poultry Waste Management (9VAC25-630). Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry AFOs and CAFOs.

Substance: The general permit regulation is no longer needed; therefore, it is being repealed. CAFO and AFO activities are regulated using other regulations.

Issues: Repealing this regulation will be advantageous to the public and to the Commonwealth because it will eliminate confusion as to the mechanism (individual permit versus general permit) that is being used to implement the requirements under the VPDES program that must be adhered to by an owner of a CAFO that discharges. There are no disadvantages of the repeal of this regulation to the public, agency, or Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. As a result of a 2021 periodic review,[2] the State Water Control Board (Board) is proposing to repeal an obsolete regulation that contains the procedures and requirements for discharges from concentrated animal feeding operations (CAFO) under the Virginia Pollutant Discharge Elimination System Permit (VPDES) general permit program. CAFOs would continue to be regulated through the issuance of VPDES individual permits.

Background. In order to comply with the United States Environmental Protection Agency's (EPA's) federal CAFO rule, the general permit rules were adopted in 2004 with an effective date of January 1, 2006. As is the case with all general permits, it had the standard five-year expiration date at the end of 2010. According to the Department of Environmental Quality (DEQ), between the time the regulation was adopted and its effective date, several federal court cases were decided that affected the CAFO rule, particularly relating to the public notice requirements. The general permit rules in this regulation did not require public notice, and as a result the Board has never issued a permit under this regulation. The regulation became obsolete after its expiration date at the end of 2010. Now, the Board proposes to repeal it in its entirety. CAFO

permits have been and will continue to be issued under a separate regulation (9VAC25-31) governing individual permits that require public comment.

Estimated Benefits and Costs. The general permit rules being repealed in this action had an expiration date of December 1, 2010, and have been obsolete since then. Also, no general permits have been issued under this regulation. Thus, no economic impact is expected from repealing this regulation other than eliminating possibly confusing language from the Virginia Administrative Code.

Businesses and Other Entities Affected. The proposed repeal of this regulation would not affect any entities.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, this action eliminates language that have been obsolete since the end of 2010. Thus, no adverse impact on any entity is indicated.

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

Localities[6] Affected.[7] The proposed repeal does not affect localities or introduce costs for local governments.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property or on real estate development costs are anticipated.

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

[2]https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2069

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

[4]Pursuant to § 2.2-4007.04 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."

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

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

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

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

Summary:

The existing Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations expired on December 31, 2010, and has not been reissued. This regulatory action repeals the regulation containing the general permit in its entirety. Concentrated animal feeding operations (CAFOs) for livestock and poultry that meet the discharge criteria are currently regulated under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). Since this general permit regulation is no longer needed, it is being repealed.

VA.R. Doc. No. R22-7031; Filed September 8, 2022, 6:31 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-192. Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (amending 9VAC25-192-10, 9VAC25-192-20).**

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

Effective Date: November 9, 2022.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1913, FAX (804) 698-4032, or email betsy.bowles@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change

shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-192-10. 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 stormwater 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 an animal waste end-user 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 where the following conditions are met:

1. 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 purposes 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.

"Animal waste" means liquid, semi-solid, and solid animal manure and process wastewater, compost, or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

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

"Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

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

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

"Department" means the ~~Virginia~~ Department of Environmental Quality.

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

"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 animal waste and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for an animal waste end-user who is not covered under the general permit, the requirements of 9VAC25-192-90 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.

"Waste nutrient analysis rate" means a land application rate for animal waste approved by the board as specified in this regulation.

"Waste storage facility" means (i) a waste holding pond or tank used to store manure prior to land application, (ii) a lagoon or treatment facility used to digest or reduce the solids or nutrients, or (iii) a structure used to store manure or waste.

"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.

"300 animal units" means 300,000 pounds of live animal weight, or the following numbers and types of animals:

a. 300 slaughter and feeder cattle;

b. 200 mature dairy cattle (whether milked or dry cows);

c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);

d. 150 horses;

e. 3,000 sheep or lambs;

f. 16,500 turkeys;

g. 30,000 laying hens or broilers.

9VAC25-192-20. Purpose; ~~delegation of authority;~~ effective date of permit.

A. This general permit regulation governs the pollutant management activities at animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and animal waste utilized or stored by animal waste end-users. These animal feeding operations may operate and maintain treatment works for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges.

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

~~C.~~ This general permit will become effective on November 16, 2014. This general permit will expire 10 years from the effective date.

VA.R. Doc. No. R23-7268; Filed September 9, 2022, 2:27 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-193. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concrete Products Facilities (amending 9VAC25-193-10; repealing 9VAC25-193-30).**

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

Effective Date: November 9, 2022.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, FAX (804) 698-4178, or email elleanore.daub@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-193-10. Definitions.

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

"Best management practices" or "BMPs" means schedules of activities, practices and prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

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

"Industrial activity" means facilities or those portions of a facility where the primary purpose is classified as:

1. North American Industry Classification System (NAICS) Code 327331 - Concrete Block and Brick Manufacturing, (Executive Office of the President, Office of Management and Budget, United States, 2017) and Standard Industrial Classification (SIC) Code 3271 - Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);

2. NAICS Code 327332 Concrete Pipe Manufacturing, NAICS Code 327390 Other Concrete Product Manufacturing, NAICS Code 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (dry mix concrete manufacturing only) and SIC Code 3272 - Concrete Products, Except Block and Brick; or

3. NAICS Code 327320 Ready-Mix Concrete Manufacturing and SIC Code 3273 - Ready-Mixed Concrete, including both permanent and portable plants.

These facilities are collectively defined as "Concrete Products Facilities."

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

"No discharge system" means process, commingled, or stormwater systems designed to operate so that there is no discharge of wastewater or pollutants, except in storm events greater than a 25-year, 24-hour storm event.

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

"Significant spills" includes releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.) (see 40 CFR 302.4).

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

"25-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

"Vehicle or equipment degreasing" means the washing or steam cleaning of engines or other drive components of a vehicle or piece of equipment in which the purpose is to degrease and clean petroleum products from the equipment for maintenance purposes. Removing sediment and concrete residue is not considered vehicle or equipment degreasing.

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

9VAC25-193-30. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7269; Filed September 9, 2022, 2:27 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-194. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Vehicle Wash Facilities and Laundry Facilities (amending 9VAC25-194-10; repealing 9VAC25-194-30).**

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

Effective Date: January 2, 2023.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, FAX (804) 698-4032, or email elleanore.daub@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-194-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9VAC25-31 (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

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

"Construction equipment" means trenchers, backhoes, boring equipment, bulldozers, loaders, dump trucks, and any other piece of earth moving equipment.

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

"Laundry" means any self-service facility where the washing of clothes is conducted as designated by SIC 7215. It does not include facilities that engage in dry cleaning.

"Maintenance equipment" means street sweepers and catch basin cleaner trucks.

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

"Vehicle maintenance" means vehicle and equipment rehabilitation, mechanical repairs, painting, fueling, and lubrication.

"Vehicle wash" means any fixed or mobile facility where the manual, automatic, or self-service exterior washing of vehicles is conducted and includes the following:

1. Vehicles that convey passengers or goods on streets or highways as designated by Standard Industrial Classification (SIC) Code 7542 such as automobiles, trucks, motor homes, buses, motorcycles, ambulances, fire trucks, and tractor trailers;

2. Incidental floor cleaning wash waters associated with facilities that wash vehicles where the floor wash water also passes through the vehicle wash treatment system;

3. Golf course equipment and lawn maintenance equipment;

4. Maintenance and construction equipment; and

5. Recreational boats less than 8.6' beam and 25' in length towed by a vehicle.

"Vehicle wash" does not mean engine cleaning or degreasing; the cleaning of floors in vehicle maintenance areas, cleaning of the interior of tanks or trailers carrying bulk or raw material, cleaning of equipment used in the paving industry, cleaning of chemical spreading equipment, or cleaning of tanker trucks, garbage trucks, livestock trailers, trains, boats larger than 8.6' beam and 25' in length, or aircraft; or the use of acid caustic metal brighteners or steam heated water.

9VAC25-194-30. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7270; Filed September 9, 2022, 2:27 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-196. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (amending 9VAC25-196-10; repealing 9VAC25-196-30).**

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

Effective Date: November 9, 2022.

Agency Contact: Joseph Bryan, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2659, FAX (804) 698-4178, or email joseph.bryan@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-196-10. Definitions.

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

"Blowdown" means a discharge of recirculating water from any cooling equipment or cooling process in order to maintain a desired quality of the recirculating water. Boiler blowdown is excluded from this definition.

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

"Cooling water" means water used for cooling which does not come into direct contact with any raw product, intermediate product (other than heat) or finished product. For the purposes of this general permit, cooling water can be generated from any cooling equipment blowdown or produced as a result of any noncontact cooling process.

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

"Director" means the Director of the Virginia Department of Environmental Quality, or an authorized representative.

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

9VAC25-196-30. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7271; Filed September 9, 2022, 2:28 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-10 through 9VAC25-210-65, 9VAC25-210-80 through 9VAC25-210-180, 9VAC25-210-220, 9VAC25-210-230, 9VAC25-210-310, 9VAC25-210-340 through 9VAC25-210-390, 9VAC25-210-500; adding 9VAC25-210-40, 9VAC25-210-165, 9VAC25-210-172, 9VAC25-210-174; repealing 9VAC25-210-600).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: November 9, 2022.

Agency Contact: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, email dave.davis@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" as necessary, adding permit rationale, adding criteria for requesting and granting a public hearing in a permit action, adding requirements related to controversial permits and controversial permit reporting, removing provisions delegating authority, and updating the definition of "board" and citations to the Code of Virginia.

9VAC25-210-10. Definitions.

A. Definitions specific to surface water withdrawals are in 9VAC25-210-300.

B. Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Adjacent" means bordering, contiguous, or neighboring wetlands separated from other surface water by man-made dikes or barriers, natural river berms, sand dunes, and the like.

"Administratively withdrawn" means a decision by the ~~board~~ department that permanently discontinues the review or processing of a VWP permit application.

"Applicant" means a person applying for a VWP individual permit or for coverage under a VWP general permit.

"Aquatic environment" means surface waters and the habitat they provide, including both plant and animal communities.

"Avoidance" means not taking or modifying a proposed action or parts of an action so that there is no adverse impact to the aquatic environment.

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include domestic uses (including public water supply), agricultural uses, electric power generation, commercial uses, and industrial uses.

"Best management practices" or "BMPs" means a schedule of activities, prohibition of practices, maintenance procedures, and other management practices that prevent or reduce the pollution of surface waters.

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

"Channelization" means the alteration of a stream channel by widening, deepening, straightening, cleaning, or paving certain areas.

"Compensation" or "compensatory mitigation" means (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-210-160 and 9VAC25-210-165.

"Construction site" means any site where land-disturbing activity is conducted or physically located for the purpose of erecting buildings, roads, or other discrete structures, including on-site or off-site areas used for dependent, support facilities, such as quarries, mines, or temporary stormwater management or erosion control structures.

"Conversion" means those impacts to surface waters that permanently change an existing wetland or aquatic resource type to a different wetland or aquatic resource type.

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

"Cowardin classification" or "Cowardin classification method," unless otherwise specified in this chapter, means the waters classification system in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, Lewis M. II, et al., U.S. Fish and Wildlife Service, December 1979, Reprinted 1992).

"Creation" means the establishment of a wetland or other aquatic resource where one did not formerly exist.

"Cross-sectional drawing" means a scaled graph or plot that represents the plane made by cutting across an object at right angles to its length. Objects may include a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

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

"Director" means the Director of the Department of Environmental Quality (DEQ) or an authorized representative.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters.

"Draft VWP permit" means a document indicating the ~~board's~~ department's tentative decision relative to a VWP permit action.

"Draining" means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Ecologically and environmentally preferable" means capable of providing a higher likelihood than alternative proposals of replacing existing wetland acreage and functions, stream functions, water quality, and fish and wildlife resources.

"Emergent wetland" means a class of wetlands dominated by erect, rooted, herbaceous plants growing in water or on a substrate, excluding mosses and lichens. This vegetation is present for most of the growing season in most years and is usually dominated by perennial plants.

"Enhancement" means activities conducted in existing wetlands or other portions of the aquatic environment that increase one or more aquatic functions.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

"Fill" means replacing portions of surface water with upland, or raising the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant that replaces portions of surface water with dry land or that raises the bottom elevation of a surface water for any purpose.

"Forested wetland" means a class of wetlands dominated by woody vegetation that is approximately 20 feet (six meters) tall or taller and three inches (7.6 centimeters) or larger in diameter at breast height (DBH). These areas typically possess an overstory of trees, an understory of trees or shrubs, and an herbaceous layer.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code of Virginia.

"Impairment" means the damage, loss, or degradation of the acreage or functions of wetlands or the functions of state waters.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased development project that depend upon other phases of the project do not have independent utility. Portions of a phased development project that would be constructed even if the other phases are not built can be considered as separate single complete projects with independent public and economic utility.

"In-lieu fee program" means a program operated by a nonprofit organization or governmental agency that receives moneys from persons impacting wetlands or streams pursuant to an authorized, permitted activity and that expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

"Isolated wetlands of minimal ecological value" means those wetlands that (i) do not have a surface water connection to other state waters, (ii) are less than one-tenth of an acre (0.10 acre or 4,356 square feet) in size, (iii) are not located in a

Federal Emergency Management Agency designated 100-year floodplain, (iv) are not identified by the Virginia Natural Heritage Program as a rare or state significant natural community, (v) are not forested, and (vi) do not contain listed federal or state threatened or endangered species.

"Joint Permit Application" or "JPA" means an application form that is used to apply for permits from the Norfolk District Army Corps of Engineers, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and local wetland boards for work in waters of the United States and in surface waters of Virginia.

"Law" means the State Water Control Law of Virginia.

"Legal name" means the full legal name of an individual, business, or other organization. For an individual, legal name means the first name, middle initial, last name, and suffix. For an entity authorized to do business in Virginia, the legal name means the exact name set forth in the entity's articles of incorporation, organization or trust, or formation agreement, as applicable.

"Minimization" means lessening impacts by reducing the degree or magnitude of the proposed action and its implementation.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use, and operation of mitigation banks and is operating under a signed banking agreement.

"Mitigation banking" means compensating for unavoidable wetland or stream losses in advance of development actions through the sale or purchase of credits from a mitigation bank.

"Nationwide permit" means a general permit issued by the U.S. Army Corps of Engineers (USACE) under 33 CFR Part 330 and, except where suspended by individual USACE Corps Districts, applicable nationwide.

"Nontidal wetland" means those wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 40 CFR 230.3(t). Wetlands generally include swamps, marshes, bogs, and similar areas.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 of the Code of Virginia and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Normal residential gardening and lawn and landscape maintenance" means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing; planting; fertilizing; mulching; tilling; vegetation removal by hand or by hand tools; and placement of decorative stone, fencing, and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 of the Code of Virginia, and any activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 USC § 1344 or any regulations promulgated pursuant thereto.

"Notice of project completion" means a statement submitted by the permittee or authorized agent that the authorized activities and any required compensatory mitigation have been completed.

"Open water" means an area that, during a year with normal patterns of precipitation, has standing water for sufficient duration to establish an ordinary high water mark. The term "open water" includes lakes and ponds but does not include ephemeral waters, stream beds, or wetlands.

"Ordinary high water" or "ordinary high water mark" means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

"Out-of-kind compensatory mitigation" or "out-of-kind mitigation" means a measure that does not replace the same type of wetland or surface water as was impacted but does replace lost wetland or surface water functions or provide a water quality, habitat, or other desirable benefit.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the stream bed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permanent flooding or impounding" means a permanent increase in the duration or depth of standing water on a land

surface, such as from a dam. Permanent increases in duration or depth of standing water that result from extended-detention basins and enhanced extended-detention basins, when designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3), or when designed in accordance with local standards that, at a minimum, meet the DCR standards, are not considered to be permanent flooding and impounding.

"Permanent impacts" means those impacts to surface waters, including wetlands, that cause a permanent alteration of the physical, chemical, or biological properties of the surface waters or of the acreage or functions of a wetland.

"Permittee" means the person who holds a VWP individual or general permit.

"Permittee-responsible compensatory mitigation" or "permittee-responsible mitigation" means compensation or compensatory mitigation, as defined in this section, that is undertaken by the permittee, or an authorized agent or contractor, for which the permittee retains full responsibility.

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

"Phased development" means more than one project proposed for a single piece of property or an assemblage of contiguous properties under consideration for development by the same person, or by related persons, that will begin and be completed at different times. Depending on the relationship between the projects, a phased development may be considered a single and complete project or each project may be considered a single and complete project if each project has independent utility, as defined in this section.

"Plan view drawing" means a scaled graph or plot that represents the view of an object as projected onto orthogonal planes. Objects may include structures, contours, or boundaries.

"Pollutant" means any substance, radioactive material, or heat that causes or contributes to or may cause or contribute to pollution.

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

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

"Profile drawing" means a scaled graph or plot that represents the side view of an object. Objects may include a surface water body or a portion of it, a man-made channel, an above-ground structure, a below-ground structure, a geographical feature, or the ground surface itself.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views, and comments to the ~~board pursuant to § 62.1-44.15:02 of the Code of Virginia~~ department.

"Regional permit" means a general permit issued by the U.S. Army Corps of Engineers under 33 CFR Part 330 and applicable within a specified geographic area.

"Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered, or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

"Riprap" means a layer of nonerodible material such as stone or chunks of concrete.

"Section 401" means § 401 of the Clean Water Act, or 33 USC § 1341, as amended in 1987.

"Scrub-shrub wetland" means a class of wetlands dominated by woody vegetation, excluding woody vines, approximately three to 20 feet (one to six meters) tall. The species include true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility as defined in this section. For linear projects, the single and complete project (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single water body) and to multiple crossings of the same water body at separate and distinct locations. Phases of a project that have independent utility may each be considered single and complete.

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

"Stream bed" or "stream channel" means the substrate of a stream, as measured between the ordinary high water mark along each side of a stream. The substrate may consist of organic matter, bedrock, or inorganic particles that range in size from clay to boulders, or a combination of both. Areas contiguous to the stream bed, but outside of the ordinary high water mark along each side of a stream, are not considered part of the stream bed.

"Surface water" means all state waters that are not groundwater as groundwater is defined in § 62.1-255 of the Code of Virginia.

"Suspend" or "suspension" means a decision by the ~~board~~ department that stops the review or processing of a permit application or request to modify a permit or permit coverage until such time that information requested by the ~~board~~ department is provided, reviewed, and deemed adequate.

"Temporal loss" means the time lag between the loss of aquatic resource functions caused by the impacts and the replacement of aquatic resource functions by compensatory mitigation.

"Temporary impacts" means impacts to wetlands or other surface waters that do not cause a permanent alteration of the physical, chemical, or biological properties of surface waters or the permanent alteration or degradation of existing wetland acreage or functions. Temporary impacts include activities in which the impact area is restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that previous wetland acreage and functions or surface water functions are restored.

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

"Toxic pollutant" means any agent or material including those listed under § 307(a) of the Water Pollution Prevention and Control Act (33 USC § 1317(a)), which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health, or other adverse environmental effects.

"Undesirable plant species" means any species that invades, naturally colonizes, or otherwise dominates a compensatory mitigation site or mitigation bank, such that it causes or contributes to the failure of the vegetative success criteria for a particular compensatory mitigation site, mitigation bank, or in-lieu fee program project, or it otherwise prohibits the restoration of the same vegetation cover type that was originally present.

"VWP general permit" means the general permit text, terms, requirements, and conditions set forth in a regulation that constitutes a VWP permit authorizing a specified category of activities.

"VWP permit" means an individual ~~or general~~ permit issued by the ~~board~~ department or a general permit issued as a regulation adopted by the board under § 62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification. For any applicant to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 USC § 717f(c)) to construct any natural gas transmission pipeline greater than 36 inches inside diameter, issuance of an individual VWP permit pursuant to this chapter and a certification issued pursuant to Article 2.6 (§ 62.1-44.15:80 et seq.) of the State Water Control Law shall together constitute the certification required under § 401 of the federal Clean Water Act.

"Water quality standards" means water quality standards adopted by the board and approved by the administrator of the U.S. Environmental Protection Agency under § 303 of the Clean Water Act as defined in 9VAC25-260-5.

"Watershed approach" means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed and that ensures authorized impacts and mitigation have been considered on a watershed scale.

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

9VAC25-210-40. Permit rationale.

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

certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC25-210-45. Surface waters delineations.

A. Wetlands. Each wetland delineation, including those for isolated wetlands, shall be conducted in accordance with the U.S. Army Corps of Engineers (USACE) "Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" (Federal Manual) and any regional wetland supplements approved for use by USACE. These Federal Manuals shall be interpreted in a manner consistent with USACE guidance and the requirements of this chapter, and any delineation guidance adopted by the ~~board~~ department as necessary to ensure consistency with the USACE implementation of delineation practices. USACE regulatory guidance letters or Department of Environmental Quality policy or guidance may be used to supplement preparation of wetlands delineations.

B. Other surface waters. Delineations for surface waters other than wetlands may be conducted in accordance with USACE or DEQ policy or USACE or DEQ guidance and shall take into consideration the location of an ordinary high water mark, if present.

9VAC25-210-50. Prohibitions and requirements for VWP permits.

A. Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

2. Filling or dumping;

3. Permanent flooding or impounding; or

4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

B. No VWP permit shall be issued:

1. Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including § 10.1-1408.5 of the Code of Virginia;

2. For the discharge of any radiological, chemical, or biological warfare agent or high level radioactive material into surface waters.

C. An individual VWP permit shall be required for impacts to state waters for the construction of any natural gas transmission pipeline greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)). For purposes of this subsection:

1. Each wetland and stream crossing shall be considered as a single and complete project; however, only one individual VWP permit addressing all such crossings shall be required for any such pipeline. Notwithstanding the requirement for only one such individual permit addressing all such crossings, individual review of each proposed water body crossing with an upstream drainage area of five square miles or greater shall be performed.

2. All pipelines shall be constructed in a manner that minimizes temporary and permanent impacts to state waters and protects water quality to the maximum extent practicable, including by the use of applicable best management practices that the ~~board~~ department determines to be necessary to protect water quality.

3. The department shall assess an administrative charge to any applicant for such project to cover the direct costs of services rendered associated with its responsibilities pursuant to this subsection. This administrative charge shall be in addition to any fee assessed pursuant to § 62.1-44.15:6 of the Code of Virginia and as provided in 9VAC25-20.

9VAC25-210-55. Statewide information requirements.

The ~~board~~ department may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the ~~board~~ department.

9VAC25-210-60. Exclusions.

The activities in this section do not require a VWP permit but may require other permits under state and federal law. Upon request by the ~~board~~ department, any person claiming one of these exclusions shall demonstrate to the satisfaction of the ~~board~~ department that he qualifies for the exclusion. Exclusions pertaining to surface water withdrawals are established in 9VAC25-210-310.

1. Discharges of dredged or fill material into state waters, except wetlands, which are addressed under a USACE Regional, General, or Nationwide Permit, and for which no § 401 Water Quality Certificate is required.

2. Any discharge of stormwater from municipal separate storm sewer systems or land disturbing activities authorized by 9VAC25-870, or the discharge of sewage, industrial wastes, or other wastes or any noxious or deleterious substances into surface waters that is authorized by a Virginia Pollutant Discharge Elimination System (VPDES)

permit in accordance with 9VAC25-31 or a Virginia Pollution Abatement (VPA) permit in accordance with 9VAC25-32.

3. Any activity governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, unless state certification is required by § 401 of the Clean Water Act. State certification is waived if the activity meets the provisions of subdivision 10 a of this section. The activity does not require a VWP permit pursuant to § 62.1-44.15:21 G of the Code of Virginia.

4. Normal residential gardening and lawn and landscape maintenance in a wetland, or other similar activity, that is incidental to an occupant's ongoing residential use of property and is of minimal ecological impact. The criteria governing this exclusion are set forth in the definition of "normal residential gardening and lawn and landscape maintenance" in 9VAC25-210-10.

5. Maintenance of currently serviceable structures, such as purpose-built stormwater and utility structures, transportation structures, dikes, groins, levees, dams, riprap breakwaters, causeways, or bridge abutments or approaches. Maintenance includes the emergency reconstruction of recently damaged parts but does not include modifications that change the character, scope, or size of the original design. If the original design is not available, the permittee shall submit the best available information on the design for consideration and approval by the ~~board~~ department. In order to quality for this exclusion, emergency reconstruction shall occur as soon as practicable after damage occurs.

6. Impacts to open waters that do not have a detrimental effect on public health, animal life, or aquatic life or to the uses of such waters for domestic or industrial consumption, recreation, or other uses.

7. Flooding or back-flooding impacts to surface waters resulting from the construction of temporary sedimentation basins on a construction site when such structures are necessary for erosion and sediment control or stormwater management purposes.

8. Normal agriculture and silviculture activities in a wetland such as plowing; seeding; cultivating; minor drainage and harvesting for the production of food, fiber, and forest products; or upland soil and water conservation practices.

a. To fall under this exclusion, the activities specified in this subdivision 8 must be part of an established (i.e., ongoing) agriculture or silviculture operation, and must be in accordance with applicable best management practices set forth in either Forestry Best Management Practices for Water Quality in Virginia Technical Guide (Fourth Edition, July 2002) or Virginia Agricultural BMP Manual (2000), which facilitate compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas lying fallow as part of a conventional, rotational cycle are part of an established operation.

b. Activities which bring a new area into agricultural or silvicultural use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If the activity takes place outside surface waters, it does not need a VWP permit, whether or not it is part of an established agriculture or silviculture operation.

c. For the purposes of this subdivision 8, cultivating, harvesting, minor drainage, plowing, and seeding are defined as follows:

(1) "Cultivating" means physical methods of soil treatment employed within established agriculture and silviculture lands on farm or forest crops to aid and improve their growth, quality, or yield.

(2) "Harvesting" means physical measures employed directly upon farm, forest, or crops within established agricultural and silviculture lands to bring about their removal from farm or forest land, but does not include the construction of farm or forest roads.

(3) "Minor drainage" means:

(a) The discharge of dredged or fill material incidental to connecting upland drainage facilities to surface waters, adequate to effect the removal of excess soil moisture from upland croplands. Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops;

(b) The discharge of dredged or fill material for the purpose of installing ditching or other water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, or other wetland crop species, where these activities and the discharge occur in surface waters which are in established use for such agricultural and silviculture wetland crop production;

(c) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments that have been constructed in accordance with applicable requirements of the Clean Water Act, and that are in established use for the production of rice, or other wetland crop species;

(d) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting, or cultivating of crops on land in established

use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year after such blockages are discovered in order to be eligible for exclusion; and

(e) Minor drainage in surface waters is limited to drainage within areas that are part of an established agriculture or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a nonwetland (for example, wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to agriculture). In addition, minor drainage does not include the construction of any canal, ditch, dike, or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog, or any other wetland or aquatic area constituting surface water. Any discharge of dredged or fill material into surface water incidental to the construction of any such structure or waterway requires a VWP permit, unless otherwise excluded or exempted by this chapter.

(4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means used on farm or forest land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of surface water to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities does not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(5) "Seeding" means the sowing of seed and placement of seedlings to produce farm or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

9. Discharges of dredged or fill material into wetlands when addressed under a U.S. Army Corps of Engineers Regional, General, or Nationwide Permit and that meet the provisions of subdivision 10 a of this section.

10. Construction or maintenance of farm ponds or impoundments, stock ponds or impoundments, or irrigation ditches, or the maintenance (but not construction) of drainage ditches.

a. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments applies to those structures that are operated for normal agricultural or silvicultural purposes, and are less than 25 feet in height or create a maximum impoundment capacity smaller than 100 acre-feet.

b. The exclusion for the construction and maintenance of farm or stock ponds and farm or stock impoundments does not include the impacts associated with the withdrawal of surface water from, within, or behind such structures. A VWP permit may be required for the surface water withdrawal.

c. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exclusion.

d. The maintenance dredging of existing ditches is included in this exclusion provided that the final dimensions of the maintained ditch do not exceed the average dimensions of the original ditch. This exclusion does not apply to the construction of new ditches or to the channelization of streams.

11. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with applicable best management practices (BMPs) set forth in either Forestry Best Management Practices for Water Quality in Virginia, Technical Guide, Fourth Edition, July 2002, or Virginia Agricultural BMP Manual, 2000, to ensure that flow and circulation patterns and chemical and biological characteristics of surface waters are not impaired, that the reach of such waters is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized. The BMPs which must be applied to satisfy this provision include the following baseline provisions:

a. Permanent roads (for agriculture or forestry activities), temporary access roads (for mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific agriculture, silviculture or mining operations, and local topographic and climatic conditions;

b. All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into surface waters;

c. The road fill shall be bridged, piped, culverted, or otherwise designed to prevent the restriction of expected flood flows;

d. The fill shall be properly stabilized and maintained to prevent erosion during and following construction;

e. Discharges of dredged or fill material into surface waters to construct road fill shall be made in a manner which minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within state waters (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

f. In designing, constructing, and maintaining roads, vegetative disturbance in surface waters shall be kept to a minimum;

g. The design, construction, and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

h. Borrow material shall be taken from upland sources whenever feasible;

i. The discharge shall not take, or jeopardize the continued existence of a state-listed or federally-listed threatened or endangered species as defined under the Endangered Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in 4VAC15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or adversely modify or destroy the critical habitat of such species;

j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical on-site or off-site alternatives exist;

k. The discharge shall not be located in proximity of a public water supply or intake;

l. The discharge shall not occur in areas of concentrated shellfish production;

m. The discharge shall not occur in a component to the National Wild and Scenic River System;

n. The discharge material shall consist of suitable material free from toxic pollutants in toxic amounts; and

o. All temporary fills shall be removed in their entirety and the area restored to its original elevation.

12. Wetland and open water impacts to a stormwater management facility that was created on dry land for the purpose of conveying, treating, or storing stormwater.

9VAC25-210-65. Administrative continuance.

A. Administrative continuance provisions shall apply to all VWP permits.

B. When the permittee has submitted a timely and complete application for reissuance of an existing VWP individual permit, but through no fault of the permittee, the ~~board~~ department does not reissue or reissue with conditions a VWP individual permit or the ~~board~~ department does not provide notice of its tentative decision to deny the application before an existing VWP individual permit expires, the conditions of the expiring VWP individual permit shall be administratively continued in full force and effect until the effective date of a reissued permit or the date on which the ~~board~~ department denies the application. Complete application requirements for a VWP individual permit are located in 9VAC25-210-80 and 9VAC25-210-340. Timely application shall be a minimum of 180 days for an individual permit or a minimum of 270 days for an individual permit for a surface water withdrawal, unless otherwise specified in the existing permit.

C. Administrative continuance of a specific VWP general permit shall be in accordance with the corresponding VWP general permit regulation.

9VAC25-210-80. Application for a VWP permit.

A. Application for a VWP Permit. Any person who is required to obtain a VWP permit, except those persons applying for an emergency VWP permit for a public water supply emergency, shall submit a complete VWP permit application to the Department of Environmental Quality through the most current Joint Permit Application procedures established within each type of Joint Permit Application. The Virginia Department of Transportation (VDOT) may use its Interagency Coordination Meeting (IACM) process for submitting JPAs. There shall be no commencement of any activity subject to this chapter prior to the issuance of a VWP permit or granting VWP general permit coverage.

B. Informational requirements for all VWP individual permit applications are identified in this subsection with the exception of applications for emergency VWP permits to address a public water supply emergency, for which the information required in 9VAC25-210-340 C shall be submitted. In addition to the information in this subsection, applications involving a surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or relicense associated with a surface water withdrawal shall also submit the information required in 9VAC25-210-340 B.

1. A complete application for a VWP individual permit, at a minimum, consists of the following information, if applicable to the project:

a. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.

b. If different from applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

c. If applicable, the authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.

d. Project name and proposed project schedule. This schedule will be used to determine the VWP permit term.

e. The following information for the project site location, and any related permittee-responsible compensatory mitigation site:

(1) The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

(2) Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

(3) The latitude and longitude to the nearest second at the center of the site or sites.

(4) The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

(5) A detailed map depicting the location of the site or sites, including the project boundary and existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

f. A narrative description of the project, including project purpose and need.

g. An alternatives analysis for the proposed project detailing the specific on-site and off-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site and off-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

h. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

(1) Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

(2) Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

(3) Open water impacts identified according to type; and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

(4) A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

(5) A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 1 h (1), 1 h (2), and 1 h (3) of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

i. Plan view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

(1) North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

(2) Limits of proposed impacts to surface waters.

(3) Location of all existing and proposed structures.

(4) All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; ordinary high water mark in nontidal areas; tidal wetlands boundary; and mean low water and mean high water lines in tidal areas.

(5) The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

(6) The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

j. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area includes at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, tidal wetland boundary, mean low water and mean high water lines in tidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of the proposed impact.

k. Materials assessment. Upon request by the ~~board~~ department, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. The applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

l. An assessment of potential impacts to federal and state listed threatened or endangered species, including any correspondence or documentation from federal or state resource agencies addressing potential impacts to listed species.

m. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

(1) If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan shall be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage and functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

(2) If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan shall be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-section drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

(3) For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions (a), (b), and (c) of this subdivision B 1 m (3) or in lieu thereof shall describe the intended protective mechanism or mechanisms that contain or contains the information required as follows:

(a) A provision for access to the site;

(b) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(c) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

(4) Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased, documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.2-44.15:23 of the Code of Virginia.

n. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas, that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

o. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

p. Permit application fee. The applicant will be notified by the ~~board~~ department as to the appropriate fee for the project in accordance with 9VAC25-20. The ~~board~~ department will continue to process the application, but the fee must be received prior to release of a draft VWP permit.

2. Reserved.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more, and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensatory mitigation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Incomplete application.

1. Where an application for an individual permit or general permit coverage is not accepted as complete by the ~~board~~ department within 15 days of receipt, the ~~board~~ department shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the ~~board~~ department considers the application complete. Where the applicant becomes aware that he omitted one or more relevant facts from a VWP permit application or submitted incorrect information in a VWP permit application or in any report to the ~~board~~ department, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purpose of review but shall not require an additional notice or an additional permit application fee.

2. An incomplete application for an individual permit or general permit coverage may be administratively withdrawn

from processing by the ~~board~~ department for failure to provide the required information after 60 days from the date of the latest written information request made by the ~~board~~ department. The ~~board~~ department shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional noticing requirements.

3. An applicant may request a suspension of application review by the ~~board~~ department. A submission by the applicant making such a request shall not preclude the ~~board~~ department from administratively withdrawing an incomplete application.

9VAC25-210-90. Conditions applicable to all VWP permits.

A. Duty to comply. The permittee shall comply with all conditions and limitations of the VWP permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, toxic standards, and prohibitions. Any VWP permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for enforcement action, VWP permit termination, VWP permit revocation, VWP permit modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP permit that may have a reasonable likelihood of adversely affecting human health or the environment.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~ department or any duly authorized agent of the ~~board~~ department, at reasonable times and under reasonable circumstances, to conduct the actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Enter upon permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and

3. Sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

E. Duty to provide information. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the ~~board~~ department prior to commencing construction.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 as published in the 40 CFR July 1, 2017, update and 82 FR 40836 (August 28, 2017).

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

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

4. Records of monitoring information shall include as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

G. Duty to reapply. Any permittee desiring to continue a previously permitted activity after the expiration date of the VWP permit shall apply for and obtain a new permit or, if applicable, shall request an extension in accordance with 9VAC25-210-180.

9VAC25-210-100. Signatory requirements.

A. Application. Any application for a VWP permit under this chapter shall bear the applicant's signature or the signature of a person acting in the applicant's behalf, with the authority to bind the applicant. Electronic submittals containing the

original signature page, such as that contained in a scanned document file, are acceptable.

B. Reports. All reports required by VWP permits and other information requested by the ~~board~~ department shall be signed by:

1. One of the persons described in subsection A of this section; or

2. 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 subsection A of this section; and

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, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the ~~board~~ department prior to or together with any separate information, or applications to be signed by an authorized representative.

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

9VAC25-210-110. Establishing applicable standards, limitations, or other VWP permit conditions.

A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, and for surface water withdrawals in 9VAC25-210-370, each VWP permit shall include conditions meeting the requirements established in this section where applicable.

B. Water quality standards and state requirements. The VWP permit shall include requirements to comply with all appropriate provisions of state laws and regulations.

C. Toxic pollutants.

1. Where the ~~board~~ department finds that appropriate limitations may not ensure compliance with the law or state water quality standards the ~~board~~ department shall require the permittee to follow a program of biological or chemical toxics monitoring. The requirement may include a VWP permit reopener to allow the imposition of toxicity reduction or elimination measures determined to be necessary as a result of the ~~board's~~ department's evaluation of the results of the toxic monitoring and other available information. Based upon this determination, appropriate limitations will be included in the VWP permit to ensure the reduction or elimination of toxic pollutants and allow the ~~board~~ department to ensure that the proposed project will comply with water quality standards and other appropriate requirements of the law.

2. Limitations will be included in the VWP permit to control all toxic pollutants which the ~~board~~ department determines (based on information reported in a VWP permit application or a notification or on other information) are or may be discharged at a level which would adversely affect the beneficial use of the receiving waters.

D. Monitoring requirements as conditions of VWP permits may include but are not limited to:

1. Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate) when required as a condition of the VWP permit;

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

3. Applicable reporting requirements based upon the impact of the regulated activity on water quality; and

4. Requirements to report monitoring results with a frequency dependent on the nature and effect of the regulated activity.

E. Best management practices (BMPs). The VWP permit may require the use of BMPs to control or abate the discharge of pollutants.

F. Reissued VWP permits. When a VWP permit is renewed or reissued, limitations, standards, or conditions must be in conformance with current limitations, standards, or conditions.

G. Reopening VWP permits. Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the ~~board~~ department or the

permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

9VAC25-210-116. Compensation.

A. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters. Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type of compensation provided shall be applied to permitted impacts to help meet this requirement. Credit may be given for preservation of upland buffers already protected under other ordinances to the extent that additional protection and water quality and fish and wildlife resource benefits are provided.

B. Practicable and ecologically and environmentally preferable compensation alternatives.

1. An analysis shall be required to justify that permittee-responsible compensatory mitigation is ecologically and environmentally preferable to the purchase of mitigation bank credits or in-lieu fee program credits with a primary service area that covers the impact site if such credits are available in sufficient quantity for the project at the projected time of need. The analysis shall address the ability of the permittee-responsible compensatory mitigation sites to replace lost wetland acreage and functions or lost stream functions and water quality benefits. The analysis comparing the impacted and compensation sites may use a method that assesses water quality or habitat metrics, such as that required by 9VAC25-210-80 C, or a method that assesses such criteria as water quality benefits, distance from impacts, hydrologic source and regime, watershed, vegetation type, soils, constructability, timing of compensation versus impact, property acquisition, and cost.

2. The applicant shall demonstrate that permittee-responsible compensatory mitigation can be protected in perpetuity through a protective mechanism approved by the Department of Environmental Quality, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument.

C. Compensatory mitigation proposals shall be evaluated as follows:

1. The purchase of mitigation bank credits and in-lieu fee program credits with a primary service area that covers the impact site when available shall in most cases be deemed the ecologically and environmentally preferable form of compensation for project impacts. However, permittee-responsible compensatory mitigation may be considered when the applicant satisfactorily demonstrates that permittee-responsible compensatory mitigation is ecologically and environmentally preferable in accordance with subdivision B 1 of this section.

2. Compensatory mitigation for unavoidable wetland impacts may be met through the following options, which are preferred in the following sequence: mitigation banking, in-lieu fee program, and permittee-responsible compensatory mitigation. However, the ~~board~~ department shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources as provided in 33 CFR Part 332. When considering options for providing the required compensatory mitigation, DEQ shall consider the type and location options in the following order:

a. Mitigation bank credits;

b. In-lieu fee program credits;

c. Permittee-responsible mitigation under a watershed approach;

d. Permittee-responsible mitigation through on-site and in-kind mitigation;

e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;

f. Restoration, enhancement, or preservation of upland buffers adjacent to wetlands when utilized in conjunction with subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection and when consistent with subsection A of this section; and

g. Preservation of wetlands when utilized in conjunction with subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection and when consistent with subsection A of this section.

3. Compensatory mitigation for unavoidable stream impacts may be met through the following options, which are preferred in the following sequence: mitigation banking, in-lieu fee program, and permittee-responsible mitigation. However, the ~~board~~ department shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources as provided in 33 CFR Part 332. One factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology approved by the ~~board~~ department. When considering options for providing the required compensatory

mitigation, DEQ shall consider the type and location options in the following order:

a. Mitigation bank stream credits;

b. In-lieu fee program credits;

c. Permittee-responsible mitigation under a watershed approach;

d. Permittee-responsible mitigation through on-site and in-kind mitigation;

e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;

f. Restoration, enhancement, or preservation of upland buffers adjacent to streams when utilized in conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection and when consistent with subsection A of this section; and

g. Preservation of stream channels and adjacent riparian buffers when utilized in conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection and when consistent with subsection A of this section.

4. Compensatory mitigation for open water impacts may be required to protect state waters and fish and wildlife resources from significant impairment, as appropriate. Compensation shall not be required for permanent or temporary impacts to open waters that are identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

D. In-lieu fee program approval.

1. The ~~board~~ department may approve the use of a program by issuing a VWP permit for a specific project or by taking an enforcement action and following applicable public notice and comment requirements, or by granting approval of a program after publishing a notice of its intent in the Virginia Register of Regulations and accepting public comments on its approval for a minimum of 30 days.

2. Where a program is mandated by the Code of Virginia to be implemented and such program is approved by the U.S. Army Corps of Engineers, the program may be used as deemed appropriate for any VWP permit or enforcement action.

3. An approved program must meet the following criteria:

a. Demonstration of a no net loss policy in terms of wetland acreage and functions or stream functions and water quality benefits by adoption of operational goals or objectives for restoration, creation, enhancement, or preservation;

b. DEQ approval of each site for inclusion in the program;

c. A commitment to provide annual reports to the ~~board~~ department detailing contributions received and acreage and type of wetlands or streams preserved, created or restored in each watershed with those contributions, as well as the compensatory mitigation credits contributed for each watershed of project impact;

d. A mechanism to establish fee amounts that will ensure each contribution will be adequate to compensate for the wetland acreage and functions or stream functions and water quality benefits lost in the impacted watershed; and

e. Such terms and conditions as the ~~board~~ department deems necessary to ensure a no net loss of wetland acreage and functions or stream functions and water quality benefits from permitted projects providing compensatory mitigation.

4. Approval may be granted for up to 10 years and may be renewed by the ~~board~~ department upon a demonstration that the program has met the criteria in subdivision 3 of this subsection.

E. Use of mitigation banks. The use of mitigation banks for compensating project impacts shall be deemed appropriate if the following criteria are met:

1. The bank meets the criteria and conditions found in § 62.1-44.15:23 of the Code of Virginia;

2. The bank is ecologically and environmentally preferable to practicable on-site and off-site individual compensatory mitigation options;

3. The banking instrument, if approved after July 1, 1996, has been approved by a process that involved public review and comment in accordance with federal guidelines; and

4. The applicant provides verification to DEQ of purchase of the required amount of credits.

F. For permittee-responsible mitigation, the final compensatory mitigation plan shall include complete information on all components of the conceptual compensatory mitigation plan detailed in 9VAC25-210-80 B 1 m and:

1. For wetlands, the final compensation plan for review and approval by DEQ shall also include a summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries. The approved protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to DEQ prior to commencing impacts in surface waters.

2. For streams, the final compensation plan for review and approval by DEQ shall also include a site access plan; an erosion and sedimentation control plan, if appropriate; an abatement and control plan for undesirable plant species; a monitoring plan, including a monitoring and reporting schedule, monitoring design, and methodologies for success; proposed success criteria; location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; a plan view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries. The approved protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to DEQ prior to commencing impacts in surface waters.

9VAC25-210-120. Draft VWP permit formulation.

A. After evaluation of a complete application, the ~~board~~ department shall make a decision to tentatively issue or deny the VWP permit pursuant to this section.

B. If the tentative decision is to issue the VWP permit then a draft VWP permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VWP permit:

1. Conditions, discharge limitations, standards and other requirements applicable to the VWP permit;

2. Monitoring requirements; and

3. Requirements for mitigation of adverse environmental impacts.

C. If the tentative decision is to deny the application, the ~~board~~ department shall do so in accordance with 9VAC25-210-230.

D. Should a decision be made to waive the requirement for a VWP permit, the ~~board~~ department shall do so in accordance with 9VAC25-210-220.

9VAC25-210-130. VWP general permits.

A. The board may issue VWP general permits by regulation for certain specified categories of activities as it deems appropriate, except as limited by subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

B. When the ~~board~~ department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the ~~board~~ department may require individual applications and VWP individual permits rather than approving coverage under a VWP general permit regulation. Cases where an individual VWP permit may be required include the following:

1. Where the activity may be a significant contributor to pollution;

2. Where the applicant or permittee is not in compliance with the conditions of the VWP general permit regulation or coverage;

3. When an applicant or permittee no longer qualifies for coverage under the VWP general permit; and

4. When a permittee operating under VWP general permit coverage requests to be excluded from coverage by applying for a VWP individual permit.

C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general permit coverage to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit regulation is issued, which applies to a permittee that is already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit regulation and subsequent coverage under a VWP individual permit.

E. VWP general permit coverage may be revoked from an individual permittee for any of the reasons set forth in 9VAC25-210-180 subject to appropriate opportunity for a hearing.

F. The permittee shall be required to submit a written notice of project completion and request a permit termination by consent within 30 days following the completion of all activities in all permitted impact areas in accordance with subsection 90 A of the applicable VWP general permit regulation.

G. Activities authorized under a VWP general permit and general permit regulation shall be authorized for the fixed term stated in the applicable VWP general permit and VWP general permit regulation.

H. Unless prohibited from coverage under a VWP general permit, the ~~board~~ department may certify or certify with conditions a general, regional, or nationwide permit proposed by the U.S. Army Corps of Engineers (USACE) in accordance with § 401 of the federal Clean Water Act as meeting the requirements of this chapter and a VWP general permit, provided that the nationwide or regional permit and the certification conditions:

1. Require that wetland or stream impacts be avoided and minimized to the maximum extent practicable;

2. Prohibit impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;

3. Require compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and functions or stream functions and water quality benefits;

4. Require that compensatory mitigation for unavoidable wetland impacts be provided in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116; and

5. Require that compensatory mitigation for unavoidable stream impacts be provided in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116, including an analysis of stream impacts utilizing a stream impact assessment methodology approved by the ~~board~~ department.

I. The certifications allowed by subsection H of this section may be provided only after the ~~board~~ department has advertised and accepted public comment on its intent to provide certification for at least 30 days.

J. Coverage under a general, regional, or nationwide permit promulgated by the USACE and certified by the ~~board~~ department in accordance with this section shall be deemed coverage under a VWP general permit regulation upon submission of proof of coverage under the general, regional, or nationwide permit and any other information required by the ~~board~~ department through the certification process. Notwithstanding the provisions of 9VAC25-20, no fee shall be required from applicants seeking coverage under this subsection.

9VAC25-210-140. Public notice of VWP individual permit actions and public comment periods.

A. Every draft VWP individual permit, with the exception of a VWP Emergency Virginia Water Protection Permit, shall be given public notice paid for by the applicant, by publication once in a newspaper of general circulation in the area affected by the proposed activity. The public notice must be published within 14 days of the applicant's receipt of a draft VWP permit, or the 120-day VWP permit processing timeframe will be suspended until such publication.

B. The ~~board~~ department shall provide a comment period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing on the VWP permit. All written comments submitted during the comment period shall be retained by the ~~board~~ department and considered during its final decision on the VWP permit.

C. The contents of the public notice for a VWP permit application or proposed VWP permit action shall include:

1. Name and mailing address of the applicant;

2. The permit application number;

3. Project location. If the location of the activity differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified;

4. Brief description of the business or activity to be conducted at the site of the proposed activity;

5. Description of the area affected. Information on the number of acres of wetlands and the number of linear feet of streams affected, as well as the name of the receiving waterway and the name of the affected watershed should be included;

6. Description of what the applicant plans to do to compensate for the affected area;

7. A statement of the tentative determination to issue or deny a VWP permit;

8. A brief description of the final determination procedure;

9. The address, email address and phone number of a specific person or persons at the state office from whom further information may be obtained; and

10. A brief description on how to submit comments and request a public hearing.

D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

E. When a VWP permit is denied, the ~~board~~ department shall do so in accordance with 9VAC25-210-230.

9VAC25-210-150. Public access to information.

All information (i) pertaining to VWP permit or VWP general permit coverage processing or (ii) in reference to any activity requiring a VWP permit or VWP general permit coverage under this chapter shall be available to the public, unless prohibited by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be identified as such at the time of submission to the ~~board~~ department and the Virginia Marine Resources Commission.

9VAC25-210-160. Public comments and hearing.

A. The ~~board~~ department shall consider all written comments and requests for a public hearing received during the VWP individual permit comment period and shall make a determination on the necessity of a public hearing in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-210-165. All proceedings, public hearings and decisions from it will be in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-210-165.

B. Should the ~~board, in accordance with § 62.1-44.15:02 of the Code of Virginia,~~ department determine to dispense with the public hearing, it may grant the VWP individual permit ~~or, at its discretion, transmit the application or request, together with all written comments from it and relevant staff documents and staff recommendations, if any, to the board for its decision~~.

C. Any applicant or permittee aggrieved by an action of the board taken without a public hearing, or inaction of the ~~board~~ department, may request in writing a hearing pursuant to ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-210-165.

9VAC25-210-165. Criteria for requesting and granting a public hearing on an individual permit action.

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing to contest the action or terms and conditions of the permit.

B. Requests for a public hearing shall contain the following information:

1. The name and postal mailing or email address of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative;

3. The reason for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and the conditions of the permit in question, together with suggested revisions and alterations to those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Water Control Board.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action, and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing, unless the permittee or applicant agrees to a later date if the director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with or in violation of the basic laws of the State Water Control Board for a water permit action, a federal law, or any regulation promulgated thereunder.

D. The director of DEQ shall notify by email or postal mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

E. If the request for a public hearing is granted, the director shall:

1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing.

2. Cause or require the applicant to publish notice of a public hearing to be published once in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

F. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

G. The director may, at his discretion, convene a public hearing on a permit action.

9VAC25-210-170. Public notice of hearing.

A. Public notice of any public hearing held pursuant to 9VAC25-210-160 and 9VAC25-210-165 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the activity is to occur; and

2. Notice of the public hearing shall be sent to all persons and government agencies that received a copy of the notice of VWP permit application and to those persons requesting a public hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 of this section at least 30 days in advance of the public hearing.

C. The content of the public notice of any public hearing held pursuant to 9VAC25-210-160 and 9VAC25-210-165 shall include at least the following:

1. Name and mailing address of each person whose application will be considered at the public hearing and a brief description of the person's activities or operations including information on the number of acres of wetlands and the number of linear feet of streams affected, a description of the nature of the withdrawal and the amount of the withdrawal; as well as the name of the receiving waterway and the name of the affected watershed;

2. The precise location of the proposed activity and the surface waters that will, or may, be affected including, where possible, reference to route numbers, road intersections, map coordinates or similar information;

3. Description of what the applicant plans to do to compensate for the affected area;

4. A brief reference to the public notice issued for the VWP permit application or permit action, including the permit application number and date of issuance, unless the public notice includes the public hearing notice;

5. Information regarding the time and location for the public hearing;

6. The purpose of the public hearing;

7. A concise statement of the relevant water quality, or fish and wildlife resource issues raised by the persons requesting the public hearing;

8. Contact person and the mailing address, email address, name of the Department of Environmental Quality regional office and phone number of the DEQ office at which the interested persons may obtain further information or request a copy of the draft VWP permit prepared pursuant to 9VAC25-210-120; and

9. A brief reference to the rules and procedures to be followed at the public hearing.

D. Public notice of any hearing held pursuant to 9VAC25-210-160 C shall be in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ this section.

E. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

9VAC25-210-172. Controversial Permits.

Before rendering a final decision on a controversial permit, the department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at that time. In making its decision, the department shall consider (i) the verbal and written comments received during the comment period and the public hearing made part of the record, (ii) any commentary of the board, and (iii) the agency files.

9VAC25-210-174. Controversial permits reporting.

At each regular meeting of the board, the department shall provide an overview and update regarding any controversial permits pending before the department that are relevant. Immediately after such presentation by the department, the board shall have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

9VAC25-210-180. Rules for modification, revocation and reissuance, extension, transfer, and termination of VWP individual permits.

A. VWP individual permits may be modified in whole or in part, revoked and reissued, extended, transferred, or terminated only as authorized by this section.

B. VWP permits may be modified upon the request of the permittee or upon ~~board~~ department initiative when any of the following developments occur:

1. When new information becomes available about the project or activity covered by the VWP permit, including project additions or alterations, that was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;

2. When a change is made in the promulgated standards or regulations on which the VWP permit was based;

3. When changes occur that are subject to "reopener clauses" in the VWP permit; or

4. When developments applicable to surface water withdrawals as specified in 9VAC25-210-380 occur.

C. A request for a modification, except those addressed in subsection E of this section, shall include the applicable informational requirements of 9VAC25-210-80 B, updated to reflect the proposed changes to the project. The ~~board~~ department may request additional information as necessary to review and prepare a draft permit. If the ~~board~~ department tentatively decides to modify a permit, it shall prepare a draft permit incorporating the proposed changes in accordance with 9VAC25-210-120 and process the draft permit in accordance with 9VAC25-210-140 through 9VAC25-210-170.

D. During the drafting and authorization of a permit modification under this section, only those conditions to be modified shall be addressed with preparing a draft modified permit. VWP permit terms and conditions of the existing permit shall remain in full force and effect during the modification of the permit.

E. Upon request of the permittee, or upon ~~board~~ department initiative with the consent of the permittee, minor modifications may be made in the VWP permit without following the public involvement procedures contained in 9VAC25-210-140, 9VAC25-210-160, or 9VAC25-210-170. Any request for a minor modification shall be in writing and shall contain the facts or reasons supporting the request. The ~~board~~ department may request additional information as necessary to review a request for minor modification. The ~~board~~ department, at its discretion, may require that the changes proposed under a minor modification to be processed as a modification in accordance with subsections B and C of this section. For VWP permits, a minor modification may only be processed to:

1. Correct typographical errors.

2. Require monitoring and reporting by the permittee at a different frequency than required in the VWP permit, based on new information justifying the change in conditions.

3. Change a compliance date provided it will not result in a net loss of wetland acreage or of functions in all surface waters.

4. Allow for a change in permittee provided that a written agreement containing a specific date for transfer of VWP permit responsibility, authorization, and liability from the current to the new permittee has been submitted to the ~~board~~ department. A VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer, has been revoked and reissued to the new permittee, or has been automatically transferred. Any individual VWP permit shall be automatically transferred to a new permittee if the current permittee:

a. Notifies the ~~board~~ department of the proposed transfer of the permit and provides a written agreement between the current and proposed permittees containing the date of transfer of VWP permit responsibility, authorization, and liability to the new permittee; and

b. The ~~board~~ department does not within 15 days notify the current and new permittees of its intent to modify the VWP permit.

5. Change project plans or uses that do not result in a change to permitted project impacts other than allowable by subdivisions 6 and 7 of this subsection.

6. Reduce wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. The Department of Environmental Quality shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

7. Authorize additional impacts to surface waters that are proposed prior to impacting the additional areas. Proposed additional impacts shall meet the following requirements:

a. The proposed additional impacts are located within the project boundary as depicted in the application for permit issuance, or are located in areas of directly related off-site work.

b. The permittee has provided sufficient documentation that the ~~board~~ department may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The ~~board~~ department recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.

c. The cumulative, additional permanent wetland or open water impacts for one or more minor modifications do not exceed one-quarter of an acre (0.25 acre or 10,890 square feet).

d. The cumulative, additional permanent stream impacts for one or more minor modifications do not exceed 100 linear feet.

e. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-210-80 B 1 g.

f. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-80 B 1 m, and 9VAC25-210-116. Prior to a minor modification approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts.

g. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the ~~board~~ department that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

8. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program, or substitute all or a portion of the prior authorized permittee-responsible compensatory mitigation with a purchase of mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

9. Allow for extension of the expiration date of the VWP permit. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit other than as may be allowed under this section, shall submit written notification requesting an extension. The permittee must file the request 90 days prior to the expiration date of the VWP permit. VWP permit modifications shall not be used to extend the term of a VWP permit beyond 15 years from the date of original issuance.

10. Activities or development applicable to surface water withdrawals as specified in 9VAC25-210-380 B.

F. After notice and opportunity for a formal hearing pursuant to ~~§ 62.1-44.15:02~~ § 2.2-4020 of the Code of Virginia , a VWP permit can be terminated for cause. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;

2. The permittee's failure in the application or during the VWP permit process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

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

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; or

6. A determination that the permitted activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

G. The ~~board~~ department may terminate the permit without cause when the permittee is no longer a legal entity due to death, dissolution, or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the ~~board~~ department shall follow the applicable procedures for termination under § 62.1-44.15:25 of the Code of Virginia and 9VAC25-230.

H. A VWP permit may be terminated by consent, as initiated by the permittee. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all permitted activities and all required compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion. The director may accept this termination on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP permit number; and

4. One of the following certifications:

a. For project completion: "I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP permit have been completed. I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit."

b. For project cancellation: "I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP permit will not occur. I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement: "I certify under penalty of law that the activities or the required compensatory mitigation authorized by this VWP permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit.

9VAC25-210-220. Waiver of VWP permit or § 401 certification.

A. The ~~board~~ department may waive permitting requirements when the ~~board~~ department determines that a proposed project impacts an isolated wetland that is of minimal ecological value as defined in 9VAC25-210-10. Upon request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the satisfaction of the ~~board~~ department that he qualifies for the waiver.

B. The ~~board~~ department may waive the requirement for a VWP individual permit when the proposed activity qualifies for a permit issued by the U.S. Army Corps of Engineers and receives a permit from the Virginia Marine Resources Commission or wetlands boards, pursuant to Chapter 12

(§ 28.2-1200 et seq.) or Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code of Virginia, and the activity does not impact instream flows.

C. The ~~board~~ department shall not require coverage under a VWP general permit or a VWP individual permit when the proposed activity meets the exclusion set forth in subdivision 10 a of 9VAC25-210-60 regardless of the issuance of a permit by the U.S. Army Corps of Engineers.

9VAC25-210-230. Denial of the VWP permit or variance request.

A. The ~~board~~ department shall make a decision to tentatively deny the VWP permit or variance request if the requirements of this chapter are not met. Basis for denial include, but are not limited to, the following:

1. The project will result in violations of water quality standards or will impair the beneficial uses of state waters.

2. As a result of project implementation, shellfish waters would be condemned in accordance with 9VAC25-260.

3. The project that the applicant proposed fails to adequately avoid and minimize impacts to state waters to the maximum extent practicable.

4. The proposed compensatory mitigation plan is insufficient or unsatisfactory for the proposed impacts and fails to achieve no net loss of existing wetland acreage and function and no net loss of functions in all surface waters.

5. The Department of Wildlife Resources indicates that natural or stockable trout waters would be permanently and negatively impacted by the proposed activity.

6. The proposed activity is prohibited by 9VAC25-210-50.

7. The effect of project impacts, together with other existing or proposed impacts to wetlands, will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

8. Failure to submit the required permit fee in accordance with 9VAC25-210-80 B 1 g or 9VAC25-210-340 C 1 g.

9. The ~~board~~ department determines that the applicant for an Emergency Virginia Water Protection Permit has not demonstrated that there is a substantial threat to public health and safety, and that normal Virginia Water Protection Permit procedures, including public comment provisions, should be followed.

B. The applicant shall be notified by letter of the ~~board's~~ department's preliminary decision to tentatively deny the VWP permit requested.

C. Should the applicant withdraw his application, no VWP permit or variance will be issued.

D. Should the applicant elect to proceed as originally proposed, the ~~board~~ department may deny the application and advise the applicant pursuant to ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-210-160 and 9VAC25-210-165 of his right to a public hearing to consider the denial.

9VAC25-210-310. Exclusions from permits for surface water withdrawals.

A. The following surface water withdrawals are excluded from VWP permit requirements. Activities other than the surface water withdrawal that are contained in 9VAC25-210-50 and are associated with the construction and operation of the surface water withdrawal are subject to VWP permit requirements, unless excluded by 9VAC25-210-60. Other permits under state and federal law may be required.

1. Any surface water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. To qualify for this exclusion, the surface water withdrawal shall be deemed to be in existence on July 1, 1989, if there was an actual withdrawal on or before that date and the withdrawal has not been abandoned.

a. Abandonment of a surface water withdrawal. A surface water withdrawal shall be deemed to be abandoned if the owner of the surface water withdrawal system (i) notifies the Department of Environmental Quality in writing that the withdrawal has been abandoned or (ii) removes or disables the surface water withdrawal system with the intent to permanently cease such withdrawal. Transfer of ownership or operational control of the surface water withdrawal system, a change in use of the water, or temporary cessation of the withdrawal shall not be deemed evidence of abandonment. The notification shall be signed by the owner of record or shall include evidence satisfactory to DEQ that the signatory is authorized to submit the notice on behalf of the owner of record. Evidence may include, but shall not be limited to, a resolution of the governing body of the owner or corporate minutes.

b. Information to be furnished to DEQ. Each owner or operator of a permanent surface water withdrawal system engaging in a withdrawal that is subject to this exclusion shall provide DEQ the estimated maximum capacity of the intake structure, the location of the existing intake structure, and any other information that may be required by the ~~board~~ department. Each owner or operator of a temporary surface water withdrawal system engaging in a withdrawal that is subject to this exclusion, where the purpose of the withdrawal is for agriculture, shall provide to DEQ the maximum annual surface water withdrawal over the last 10 years. The information shall be provided within one year of the date that notice of such request is received from DEQ and shall be updated when the maximum capacity of the existing intake structure changes. The information provided to DEQ shall not constitute a limit on the exempted withdrawal. Such

information shall be utilized by DEQ ~~and board~~ to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

2. Any surface water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, that authorized the installation of any necessary withdrawal structures to make such withdrawal. However, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

3. Any existing lawful unpermitted surface water withdrawal initiated between July 1, 1989, and July 25, 2007, that has complied with the Water Withdrawal Reporting regulations (9VAC25-200) and that is not subject to other exclusions contained in this section. Any increase in that withdrawal above the limited amount identified in subdivision a of this subdivision A 3 shall require an application for a permit for the surface water withdrawal system.

a. The largest 12-consecutive month surface water withdrawal that occurred in the 10 years prior to July 25, 2007, shall constitute a limit on the withdrawal that is excluded from permit requirements. For agricultural surface water withdrawals that did not report annually as required by the Water Withdrawal Reporting regulations (9VAC25-200) prior to July 25, 2007, the limit excluded from permit requirements was established for the operations that were in existence during the 10 years prior to July 25, 2007, by estimating the largest 12-consecutive month withdrawal based upon the following information associated with that timeframe: the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps; number and type of livestock watered annually; and number and type of livestock where water is used for cooling purposes.

b. All owners and operators of surface water withdrawals excluded from permit requirements by this section shall annually report withdrawals as required by the Water Withdrawal Reporting regulations (9VAC25-200). Failure to file annual reports either reporting actual withdrawals or the fact that withdrawals did not occur may result in the owner or operator being required to cease withdrawals, file an application, and receive a permit prior to resuming any withdrawal. Information regarding excluded withdrawal amounts shall be utilized by DEQ ~~and the board~~ to protect existing beneficial uses and shall be considered when evaluating applications for new withdrawal permits.

4. Agricultural surface water withdrawals that total less than:

a. One million gallons in a single month from nontidal waters.

b. 60 million gallons in a single month from tidal waters.

5. Surface water withdrawals from tidal waters for nonconsumptive uses.

6. Surface water withdrawals from nontidal or tidal waters, regardless of the volume withdrawn, for the following uses:

a. Firefighting or for the training activities related to firefighting, such as dry hydrants and emergency surface water withdrawals.

b. Hydrostatic pressure testing of water tight containers, pipelines, and vessels.

c. Normal single-family home residential gardening and lawn and landscape maintenance.

7. Surface water withdrawals placed into portable containers by persons owning property on or holding easements to riparian lands.

8. Surface water withdrawals that return withdrawn water to the stream of origin; do not divert more than half of the instantaneous flow of the stream; have the withdrawal point and the return point not separated by more than 1,000 feet of stream channel; and have both banks of the affected stream segment located within one property boundary.

9. Surface water withdrawals from quarry pits that do not alter the physical, biological, or chemical properties of surface waters connected to the quarry pit.

10. Surface water withdrawals from a privately owned agriculture pond, emergency water storage facility, or other water retention facility, provided that such pond or facility is not placed in the bed of a perennial or intermittent stream or wetland. Surface water withdrawals from such facilities constructed in beds of ephemeral streams are excluded from permit requirements.

11. Surface water withdrawals for all other purposes not otherwise excluded by subdivisions 4 through 10 of this subsection that total less than:

a. 10,000 gallons per day from nontidal waters.

b. Two million gallons per day from tidal waters.

B. DEQ may require any owner or operator of a surface water withdrawal system excluded from permit requirements by subdivisions A 3 through A 11 of this section to cease withdrawals and file an application and receive a permit prior to resuming any withdrawal when the ~~board's~~ department's assessment indicates that a withdrawal, whether individually or in combination with other existing or proposed projects:

1. Causes or contributes to, or may reasonably be expected to cause or contribute to, a significant impairment of the state waters or fish and wildlife resources;

2. Adversely impacts other existing beneficial uses; or

3. Will cause or contribute to a violation of water quality standards.

9VAC25-210-340. Application requirements for surface water withdrawals.

A. Persons proposing to initiate a new or expanded surface water withdrawal not excluded from requirements of this chapter by 9VAC25-210-310, proposing to reapply for a current permitted withdrawal, or a Federal Energy Regulatory Commission (FERC) license or relicense associated with a surface water withdrawal, shall apply for a VWP permit.

B. In addition to informational requirements of 9VAC25-210-80 B and if applicable, 9VAC25-210-80 C, applications for surface water withdrawals or a FERC license or relicense associated with a surface water withdrawal shall include:

1. As part of identifying the project purpose, a narrative describing the water supply issues that form the basis of the proposed project purpose.

2. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows, if available.

3. The average daily withdrawal; the maximum daily, monthly, annual, and instantaneous withdrawals; and information on the variability of the demand by season. If the project has multiple intake structures, provide for each individual intake structure and the cumulative volumes for the entire surface water withdrawal system.

4. The monthly consumptive use volume in million gallons and the average daily return flow in million gallons per day of the proposed project and the location of the return flow, including the latitude and longitude and the drainage area in square miles at the discharge point.

5. Information on flow dependent beneficial uses along the affected stream reach. For projects that propose a transfer of water resources from a major river basin to another major river basin, this analysis should include both the source and receiving basins.

a. Evaluation of the flow dependent instream and offstream beneficial uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, and commercial and industrial uses.

b. The aquatic life, including species and habitat requirements.

c. How the proposed withdrawal will alter flows.

6. Information on the proposed use of and need for the surface water and information on how demand for surface water was determined (e.g., per capita use, population growth rates, new uses, changes to service areas, and if applicable, acreage irrigated and evapotranspiration effects). If during the water supply planning process, the need for the withdrawal was established, the applicant may submit the planning process information, provided that the submittal addresses all requirements of 9VAC25-210-360. The ~~board~~ department shall deem such a submittal as meeting the requirements of this subsection. For surface water withdrawals for public water supply, see also 9VAC25-780-100 and 9VAC25-780-130.

7. Information describing the intake structure, to include intake screen mesh size and intake velocity.

8. For withdrawals proposed from an impoundment, the following:

a. Description of the flow or release control structures, including the minimum rate of flow, in cubic feet per second, size and capacity of the structure, and the mechanism to control the release.

b. Surface area in acres, maximum depth in feet, normal pool elevation, total storage capacity, and unusable storage volume in acre-feet.

c. The stage-storage relationship. For example, the volume of water in the impoundment at varying stages of water depth.

9. Whether the proposed surface water withdrawal is addressed in the water supply plan that covers the area in which the withdrawal is proposed to be located. If the proposed withdrawal is included, provide a discussion as to how the proposed withdrawal is addressed in the water supply plan, specifically in terms of projected demand, analysis of alternatives, and water conservation measures. If all or a portion of the withdrawn water will be transferred to an area not covered by the plan, the discussion shall also include the water supply plan for the area of the receiving watershed.

10. An alternatives analysis for the proposed surface water withdrawal, including at a minimum, the criteria in 9VAC25-210-360.

11. For new or expanded surface water withdrawals proposing to withdraw 90 million gallons a month or greater, a summary of the steps taken to seek public input as required by 9VAC25-210-320 and an identification of the issues raised during the course of the public information meeting process.

12. For new or expanded surface water withdrawals that involve a transfer of water between major river basins that may impact a river basin in another state, a plan describing procedures to notify potentially affected persons, both in and outside of Virginia, of the proposed project.

13. For surface water withdrawals, other than for public water supply, information to demonstrate that alternate sources of water supply are available to support the

operation of the facility during times of reduced instream flow.

C. Applications for an Emergency Virginia Water Protection Permit.

1. Applications for an Emergency Virginia Water Protection Permit to address a public water supply emergency shall include the information noted in subdivisions 1 a through 1 o of this subsection. The JPA may be used for emergency application purposes, provided that all of the information in subdivisions 1 a through 1 o of this subsection is included:

a. The applicant's legal name, mailing address, telephone number, and if applicable, fax number and electronic mail address;

b. If different from applicant, name, mailing address, telephone number, and if applicable, fax number and electronic mail address of property owner;

c. If applicable, authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address;

d. Name of water body or water bodies, or receiving waters, as applicable;

e. Name of the city or county where the project occurs;

f. Signed and dated signature page (electronic submittals containing the original signature page, such as that contained in a scanned document file are acceptable);

g. Permit application fee in accordance with 9VAC25-20;

h. The drainage area, the average annual flow and the median monthly flows at the withdrawal point, and historical low flows, if available;

i. Information on the aquatic life along the affected stream reach, including species and habitat requirements;

j. Recent and current water use including monthly water use in the previous calendar year and weekly water use in the previous six months prior to the application. The application shall identify the sources of such water and also identify any water purchased from other water suppliers;

k. A description of the severity of the public water supply emergency, including (i) for reservoirs, an estimate of days of remaining supply at current rates of use and replenishment; (ii) for wells, current production; and (iii) for intakes, current streamflow;

l. A description of mandatory water conservation measures taken or imposed by the applicant and the dates when the measures were implemented; for the purposes of obtaining an Emergency Virginia Water Protection Permit, mandatory water conservation measures shall include, but not be limited to, the prohibition of lawn and landscape watering, vehicle washing, watering of recreation fields, refilling of swimming pools, and washing of paved surfaces;

m. An estimate of water savings realized by implementing mandatory water conservation measures;

n. Documentation that the applicant has exhausted all management actions that would minimize the threat to public welfare, safety, and health and will avoid the need to obtain an emergency permit, and that are consistent with existing permit limitations; and

o. Any other information that demonstrates that the condition is a substantial threat to public health or safety.

2. Within 14 days after the issuance of an Emergency Virginia Water Protection Permit, the permit holder shall apply for a VWP permit under the other provisions of this chapter.

9VAC25-210-350. Duty to reapply for a permit for a continuation of a surface water withdrawal.

A. Any permittee with an effective permit for a surface water withdrawal shall submit a new permit application at least 270 days before the expiration date of an effective permit, unless permission for a later date has been granted by the ~~board~~ department. The Department of Environmental Quality may administratively continue an expiring permit in accordance with 9VAC25-210-65.

B. The applicant shall provide all information described in 9VAC25-210-340 and applicable portions of 9VAC25-210-80 for any reapplication. The information may be provided by referencing information previously submitted to the department that remains accurate and relevant to the permit application. The ~~board~~ department may waive any requirement of 9VAC25-210-340 and the applicable portions of 9VAC25-210-80 B, if it has access to substantially identical information.

9VAC25-210-360. Evaluation of project alternatives for surface water withdrawals.

The applicant shall demonstrate to the satisfaction of the ~~board~~ department that the project meets an established need for water to meet the project purpose. In establishing need, the applicant shall provide the following information:

1. Existing supply sources, yields, and demands, including:

a. Peak day and average daily withdrawal;

b. The public water supply safe yield and lowest daily flow of record;

c. Types of water uses; and

d. Existing water conservation measures and drought response plan, including what conditions trigger their implementation.

2. Projected demands over a minimum 30-year planning period, including the following:

a. Projected demand contained in the local or regional water supply plan developed in accordance with 9VAC25-780 or for the project service area, if such area is smaller than the planning area; if applicable or

b. Statistical population (growth) trends; if applicable, projected demands by use type; projected demand without water conservation measures; and projected demands with long-term water conservation measures.

3. Any alternatives analysis conducted specifically for withdrawals for public water supply shall include:

a. The range of alternatives to be analyzed by the applicant as follows:

(1) All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9VAC25-780;

(2) Alternatives that are practicable or feasible from both a technical and economic standpoint that had not been identified in the local or regional water supply plan developed in accordance with 9VAC25-780;

(3) Alternatives that are available to the applicant but not necessarily under the current jurisdiction of the applicant; and

(4) Water conservation measures that could be considered as a means to reduce demand for each alternative considered by the applicant.

b. The applicant shall provide a narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant.

c. The criteria used to evaluate each alternative for the purpose of establishing the least environmentally damaging practicable alternative, which includes but is not limited to:

(1) Demonstration that the proposed alternative meets the project purpose and project demonstrated need as documented pursuant to this section;

(2) Availability of the alternative to the applicant;

(3) Evaluation of interconnectivity of water supply systems, both existing and proposed;

(4) Evaluation of the cost of the alternative on an equivalent basis;

(5) Evaluation of alternative public water supply safe yields;

(6) Presence and potential impact of alternative on state and federally listed threatened and endangered species;

(7) Presence and potential impact of alternative on wetlands and streams (based on maps and aerial photos for all alternatives, field delineation required for preferred alternative);

(8) Evaluation of effects on instream flow; and

(9) Water quality considerations, including:

(a) Land use within a watershed where the type of land use may impact the water quality of the source;

(b) The presence of impaired streams and the type of impairment;

(c) The location of point source discharges; and

(d) Potential threats to water quality other than those listed in this subdivision 3 c (9).

4. Any alternatives analysis conducted for surface water withdrawals other than for public water supply shall include the following items of subdivision 3 of this section: subdivisions 3 a (3), 3 a (4), and 3 c. The analysis shall also include applicable items of subdivisions 3 a (1), 3 a (2), and 3 b.

9VAC25-210-370. VWP permit conditions applicable to surface water withdrawal permits.

A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, each VWP permit shall include conditions meeting the requirements established in this section, where applicable.

B. Instream flow conditions. Subject to the provisions of Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia, and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in Chapter 7 (§ 62.1-80 et seq.) of Title 62.1 of the Code of Virginia, instream flow conditions may include, but are not limited to, conditions that limit the volume and rate at which surface water may be withdrawn at certain times, the public water supply safe yield, and conditions that require water conservation and reductions in water use.

1. In the development of conditions that limit the volume and rate at which surface water may be withdrawn, consideration shall be given to the seasonal needs of water users and the seasonal availability of surface water flow.

2. Consideration shall also be given to the affected stream reach and the amount of water that is put to a consumptive use in the process.

3. In the development of instream flow conditions for new withdrawals, the ~~board~~ department shall take into consideration the combined effect on the hydrologic regime of the surface water within an affected stream reach due to consumptive water uses associated with:

a. All existing permitted withdrawals;

b. The total amount of withdrawals excluded from VWP permit requirements; and

c. Any other existing lawful withdrawals.

4. VWP permits for surface water withdrawals, other than for public water supply, shall identify how alternate sources of water supply will be made available to support the operation of the permitted facility during times when surface water withdrawals will be curtailed due to instream flow requirements or shall provide for modification of the operation of the facility to ensure compliance with permit conditions. Such modifications may include, but are not limited to, termination or reduction of activities at the

facility that are dependent on the permitted withdrawal, increase capacity to capture and store higher flows, or implementation of other potential management options.

C. VWP permits issued for surface water withdrawals from the Potomac River between the Shenandoah River confluence and Little Falls shall contain a condition that requires the permittee to reduce withdrawals when the restriction or emergency stage is declared in the Washington Metropolitan Area under the provisions of the Potomac River Low Flow Allocation Agreement or when the operating rules outlined by the Drought-Related Operations Manual for the Washington Metropolitan Area Water Suppliers, an attachment to the Water Supply Coordination Agreement, are in effect. The department, after consultation with the Section for Cooperative Water Supply Operations on the Potomac (CO-OP), shall direct the permittee as to when, by what quantity, and for what duration withdrawals shall be reduced.

D. The ~~board~~ department may issue permits for new or expanded surface water withdrawals that are not excluded from the requirements of this chapter by 9VAC25-210-310 based on the following criteria:

1. The amount of the surface water withdrawal is limited to the amount of water that can be put to beneficial use.

2. Based on the size and location of the surface water withdrawal, the withdrawal is not likely to have a detrimental impact on existing instream or offstream uses.

3. Based on an assessment by the ~~board~~ department, this withdrawal, whether individually or in combination with other existing or proposed projects, does not cause or contribute to, or may not reasonably be expected to cause or contribute to:

a. A significant impairment of the state waters or fish and wildlife resources;

b. Adverse impacts on other existing beneficial uses; or

c. A violation of water quality standards.

4. In cases where the ~~board's~~ department's assessment indicates that criteria contained in subdivisions 2 and 3 of this subsection are not met, the ~~board~~ department may issue a permit with special conditions necessary to assure these criteria are met.

9VAC25-210-380. Modifications to surface water withdrawal permits.

A. In addition to the requirements of 9VAC25-210-180 B, VWP permits for surface water withdrawals may be modified when any of the following developments occur:

1. When the ~~board~~ department determines that minimum instream flow levels resulting directly from the permittee's withdrawal of surface water are detrimental to the instream beneficial use, existing at the time of permit issuance, and the withdrawal of surface water should be subject to further net limitations or when an area is declared a surface water management area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

2. Significant changes to the location of the surface water withdrawal system are proposed such that the Department of Environmental Quality determines a new review is warranted due to the potential effect of the surface water withdrawal to existing beneficial uses of the new location.

3. Changes to the permitted project or the surface water withdrawal, including increasing the storage capacity for the surface water withdrawal, that propose an increase in the maximum permitted withdrawal volumes or rate of withdrawal or that cause more than a minimal change to the instream flow requirements with potential to result in a detrimental effect to existing beneficial uses.

4. A revision to the purpose of the surface water withdrawal that proposes to include a new use or uses that were not identified in the permit application or a modification of the existing authorized use or uses such that the use description in the permit application and permit is no longer applicable. Examples of uses include, but are not limited to agricultural irrigation, golf course irrigation, public water supply, manufacturing, and electricity generation.

B. Minor modifications may be made in the VWP permit for surface water withdrawals without following the public involvement requirements of 9VAC 25-210-140, 9VAC 25-210-160, or 9VAC 25-210-170. Any request for a minor modification shall be in writing and shall contain the facts or reasons supporting the request. The ~~board~~ department may request additional information as necessary to review a request for a minor modification. Minor modifications may only occur in accordance with 9VAC25-210-180 E and the following items specific to surface water withdrawals:

1. Minor changes to the location of the surface water withdrawal system, as determined by DEQ, and thus not warranting a new review of the effect of the surface water withdrawal to existing beneficial uses.

2. Allow for temporary changes to instream flow requirements or operational permit requirements to address situations such as surface water withdrawal system improvements, environmental studies, or as otherwise determined appropriate by DEQ.

3. Changes to the permitted project, including increasing the storage capacity for the surface water withdrawal, that do not cause more than a minimal change to the instream flow requirements and do not have the potential to result in a detrimental effect to existing beneficial uses.

4. Changes to the monitoring methods or locations of monitoring sites for instream flow requirements or surface water withdrawal requirements.

9VAC25-210-390. Variance from surface water withdrawal permit conditions.

A. For public water supplies. The ~~board~~ department may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal for a public water supply to address a public water supply emergency during a drought. A permittee requesting such variance must provide all information required in the application for an Emergency Virginia Water Protection Permit identified in 9VAC25-210-340 C.

B. For all other water supplies. The ~~board~~ department may grant a temporary variance to any condition of a VWP permit for a surface water withdrawal during a drought. A permittee requesting such variance must affirmatively demonstrate:

1. Public health and safety interests are served by the issuance of such variance; and

2. All management actions consistent with existing permits have been exhausted.

C. As a condition of any variance granted, the permittee shall:

1. Modify operations or facilities to comply with existing VWP permit conditions as soon as practicable; or

2. Provide new information to the ~~board~~ department that alternate permit conditions are appropriate and either apply for a new VWP permit or a modification to its existing VWP permit. The ~~board~~ department shall review any such application consistent with other sections of this chapter.

D. In addition, the ~~board~~ department may require the permittee to take any other appropriate action to minimize adverse impacts to other beneficial uses.

E. Any variances issued by the ~~board~~ department shall be of the shortest duration necessary for the permittee to gain compliance with existing permit conditions, apply for a new VWP permit, or request modification of existing permit conditions.

F. Public notice of any variance issued by the ~~board~~ department shall be given as required for draft permits in 9VAC25-210-140 A, B, and C. Such notice shall be given concurrently with the issuance of any variance and the ~~board~~ department may modify such variances based on public comment. Publication costs of all public notices shall be the responsibility of the permittee.

9VAC25-210-500. Enforcement.

The ~~board~~ department may enforce the provisions of this chapter utilizing all applicable procedures under the law and § 10.1-1186 of the Code of Virginia.

9VAC25-210-600. ~~Delegation of authority.~~ (Repealed.)

~~The director, or a designee acting for him, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

VA.R. Doc. No. R23-7150; Filed September 9, 2022, 2:28 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (amending 9VAC25-660-10 through 9VAC25-660-30, 9VAC25-660-40 through 9VAC25-660-100).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: November 9, 2022.

Agency Contact: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email dave.davis@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," removing delegation of authority provisions, and correcting Code of Virginia citations.

9VAC25-660-10. 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 Virginia Water Protection Permit Program Regulation (9VAC25-210) unless a different meaning is required by the context or is indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations,

including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

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

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric Soils of the United States lists generated by the U.S. Department of Agriculture's Natural Resources Conservation Service.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased project that depend upon other phases of the project do not have independent utility. Portions of a phased project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent public and economic utility.

"Less than one-half acre" means less than 0.50 acre (21,780 square feet).

"Notice of project completion" means a statement submitted by the permittee or authorized agent that the authorized activities and any required compensatory mitigation have been completed.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single water body) and to multiple crossings of the same water body at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit that is issued by the Department of the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

"Up to 300 linear feet" means 300.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to one-tenth acre" means 0.10 acre (4,356 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term "utility line" does not include activities that drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-660-15. Statewide information requirements.

The ~~board~~ department may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the ~~board~~ department.

9VAC25-660-20. Purpose~~; delegation of authority~~.

~~A.~~ The purpose of this chapter is to establish VWP General Permit Number WP1 under 9VAC25-210 to govern permanent and temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. Applications for coverage by this VWP general permit shall be processed for approval, approval with conditions, or denial by the ~~board~~ department. Coverage, coverage with conditions, or application denial by the ~~board~~ department shall constitute the VWP general permit action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

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

9VAC25-660-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the ~~board~~ department through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP

authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the ~~board~~ department on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.

9VAC25-660-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016, will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-660-100 is effective August 2, 2016, and expires August 1, 2026. Any coverage that is granted pursuant to 9VAC25-660-30 shall remain in full force and effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or revoked on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, 2026, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~ department.

C. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~ department.

9VAC25-660-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed, provided that:

1. The applicant submits notification as required in 9VAC25-660-50 and 9VAC25-660-60.

2. The applicant remits any required permit application fee.

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of coverage under this VWP general permit.

5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the ~~board~~ department may, at its discretion, require a VWP individual permit.

b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

7. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.

B. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the satisfaction of the ~~board~~ department that he qualifies for the waiver.

C. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the ~~board~~ department has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit, unless a state program general permit (SPGP) is required and granted for the activity or impact.

E. When the ~~board~~ department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the ~~board~~ department may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-660-40. Exceptions to coverage.

A. Coverage under this VWP general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.

B. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to impact greater than one-half acre of nontidal wetlands or open water or greater than 300 linear feet of nontidal stream bed. Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

D. The ~~board~~ department shall deny application for coverage under this VWP general permit to any applicant conducting activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

F. Coverage under this VWP general permit shall not be granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).

2. The construction of an irrigation impoundment on a perennial stream.

3. Any water withdrawal activities.

4. The location of animal feeding operations or waste storage facilities in state waters.

5. The pouring of wet or uncured concrete in state waters, unless the area is contained within a cofferdam or the work is performed in the dry or unless approved by the Department of Environmental Quality.

6. Dredging or maintenance dredging.

7. Return flow discharges from dredge disposal sites.

8. The construction of new ski areas or oil and gas wells.

9. Any activity in surface waters that will impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

10. Any activity in 100-year floodplains, as identified by the Federal Emergency Management Agency's (FEMA) flood insurance rate maps or FEMA-approved local floodplain maps.

11. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata).

12. Any activity in wetlands underlain by histosols.

13. Any activity in tidal waters or in nontidal wetlands adjacent to tidal waters.

9VAC25-660-50. Notification.

A. Notification to the ~~board~~ department will be required prior to commencing construction, as follows:

1. An application for coverage for proposed, permanent nontidal wetland or open water impacts greater than one-tenth acre or for proposed, permanent nontidal stream bed impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-660-60 B. Compensatory mitigation may be required for all permanent impacts.

2. An application for coverage for proposed, permanent nontidal wetland or open water impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this subsection:

a. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (hereafter "protected areas"), when such

restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-660-60 B. Compensatory mitigation may be required for all permanent impacts.

b. For all other projects, the application shall include the information required by subdivisions 1 through 7, 10, 11, 15, and 16 of 9VAC25-660-60 B and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-660-60 B 12.

B. The Department of Environmental Quality-approved application forms shall serve as an application for a VWP permit or VWP general permit coverage.

C. The ~~board~~ department will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of Wildlife Resources regarding the presence of federal or state listed threatened and endangered species or designated critical habitat. Based upon consultation with these agencies, the ~~board~~ department may deny application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist the Department of Environmental Quality in reviewing and processing the application.

9VAC25-660-60. Application.

A. The applicant shall file a complete application in accordance with 9VAC25-660-50 and this section for coverage under this VWP general permit for impacts to nontidal wetlands or open water of less than one-half acre and up to 300 linear feet of nontidal stream bed.

B. A complete application for VWP general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.

2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

3. If applicable, the authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.

4. The existing VWP general permit tracking number, if applicable.

5. Project name and proposed project schedule.

6. The following information for the project site location:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if

applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

11. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

12. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased, documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.1-44.15:23 of the Code of Virginia.

13. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map depicting any 100-year floodplains.

14. Permit application fee. The applicant will be notified by the ~~board~~ department as to the appropriate fee for the project in accordance with 9VAC25-20.

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local

requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. Upon receipt of an application from the Department of Transportation for a road or highway construction project by the appropriate DEQ office, the ~~board~~ department has 10 business days, pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the information requested in subsection B of this section is complete or inform the Department of Transportation that additional information is required to make the application complete. Upon receipt of an application from other applicants for any type of project, the ~~board~~ department has 15 days to review the application and either determine that the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Pursuant to § 33.2-258 of the Code of Virginia, coverage under this VWP general permit for Department of Transportation road or highway construction projects shall be approved or approved with conditions, or the application shall be denied, within 30 business days of receipt of a complete application. For all other projects, coverage under this VWP general permit shall be approved or approved with conditions, or the application shall be denied, within 45 days of receipt of a complete application. If the ~~board~~ department fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed granted.

1. In evaluating the application, the ~~board~~ department shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The ~~board~~ department may place additional requirements on a project in order to grant coverage under this VWP general permit. However, the requirements must be consistent with this chapter.

D. Incomplete application.

1. Where an application for general permit coverage is not accepted as complete by the ~~board~~ department within the applicable 10 or 15 days of receipt, the ~~board~~ department shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in any report to the ~~board~~ department, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for the purposes of review but shall not require an additional permit application fee.

2. An incomplete application for general permit coverage may be administratively withdrawn from processing by the ~~board~~ department for failure to provide the required information after 60 days from the date of the latest written information request made by the ~~board~~ department. The ~~board~~ department shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

3. An applicant may request a suspension of application review by the ~~board~~ department, but requesting a suspension shall not preclude the ~~board~~ department from administratively withdrawing an incomplete application.

9VAC25-660-70. Compensation.

A. Compensatory mitigation may be required for permanent, nontidal surface water impacts as specified in 9VAC25-660-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with the VWP general permit in 9VAC25-660-100.

B. For the purposes of this VWP general permit chapter, the ~~board~~ department shall assume that the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with a primary service area that covers the impact site is ecologically preferable to practicable on-site or other off-site surface water compensation options. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section, § 62.1-44.15:23 of the Code of Virginia, and the associated provisions of 9VAC25-210-116.

C. When required, compensatory mitigation for unavoidable, permanent wetland impacts shall be provided at a 2:1 mitigation ratio, as calculated on an area basis.

D. When required, compensatory mitigation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor determining the required stream compensation shall be an analysis of stream impacts utilizing

a stream impact assessment methodology acceptable to the Department of Environmental Quality.

E. Compensation for permanent open water impacts, other than to streams, may be required at an in-kind or out-of-kind mitigation ratio of 1:1 or less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 mitigation ratio, as calculated on an area basis. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this chapter. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources.

9VAC25-660-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the ~~board~~ department in advance of a planned change, and an application or request for modification to coverage shall be reviewed according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project equals or exceeds one-half acre of nontidal wetlands or open water or exceeds 300 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. VWP general permit coverage may be modified subsequent to issuance under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:

a. The additional impacts are proposed prior to impacting those additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work, unless otherwise prohibited by this chapter.

c. The permittee has provided sufficient documentation that the ~~board~~ department may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The ~~board~~ department recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-660-60 B 11.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the ~~board~~ department that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored in accordance with Part I A 3 and B 11 of 9VAC25-660-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-660-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed by subdivisions 1 and 2 of this subsection.

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C. The amount of credits proposed to be purchased shall be

sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-660-90. Termination of coverage.

A. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F ~~and § 62.1-44.15:02 of the Code of Virginia~~ or without cause in accordance with 9VAC25-210-180 G ~~and § 62.1-44.15:02~~.

9VAC25-660-100. VWP general permit.

VWP GENERAL PERMIT NO. WP1 FOR IMPACTS LESS THAN ONE-HALF ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts to less than one-half acre of nontidal wetlands or open water and up to

300 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the ~~board~~ department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-660-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from

the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit.

2. Compensation options that may be considered under this VWP general permit include the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with a primary service area that covers the impact site in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.

3. The final compensation plan shall be submitted to and approved by the ~~board~~ department prior to a construction activity in permitted impacts areas. The ~~board~~ department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the ~~board~~ department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the ~~board~~ department.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs remain on the project site and shall depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-660-100 Part II C. Corrective measures and additional monitoring may be required if water

quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first authorized impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

8. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

9. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the

~~board~~ department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~ department or any duly authorized agent of the ~~board~~ department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the ~~board~~ department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The ~~board~~ department does not within 15 days notify the current and new permittees of ~~its~~ the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-660-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the ~~board~~ department after public notice and opportunity for a hearing ~~pursuant to § 62.1-44.15:02 of the Code of Virginia~~ in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the ~~board~~ department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The ~~board~~ department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the ~~board~~ department shall follow the applicable procedures for termination under ~~§§ 62.1-44.15:02~~ 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination

of coverage on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the ~~board~~ department information that the ~~board~~ department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the ~~board~~ department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the ~~board~~ department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the ~~board~~ department at any time.

4. Records of monitoring information shall include, as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-660-27.

VA.R. Doc. No. R23-7176; Filed September 9, 2022, 2:31 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (amending 9VAC25-670-10 through 9VAC25-670-30, 9VAC25-670-40, 9VAC25-670-50, 9VAC25-670-60, 9VAC25-670-80, 9VAC25-670-90, 9VAC25-670-100).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: November 9, 2022.

Agency Contact: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email dave.davis@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," removing delegation of authority provisions, and correcting Code of Virginia citations.

9VAC25-670-10. 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 Virginia Water Protection Permit Program Regulation (9VAC25-210) unless a different meaning is required by the context or is indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

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

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

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

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased project that depend upon other phases of the project do not have independent utility.

Portions of a phased project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent public and economic utility.

"Notice of project completion" means a statement submitted by the permittee or authorized agent that the authorized activities and any required compensatory mitigation have been completed.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single water body) and to multiple crossings of the same water body at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

"Up to 300 linear feet" means 300.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to 1,500 linear feet" means 1,500.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to one-tenth acre" means 0.10 acre (4,356 square feet) or less.

"Up to one acre" means 1.00 acre (43,560 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-670-15. Statewide information requirements.

The ~~board~~ department may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the ~~board~~ department.

9VAC25-670-20. Purpose~~; delegation of authority~~.

~~A.~~ The purpose of this chapter is to establish VWP General Permit Number WP2 under 9VAC25-210 to govern permanent and temporary impacts related to the construction and maintenance of utility lines. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the ~~board~~ department. Coverage, coverage with conditions, or application denial by the ~~board~~ department shall constitute the VWP general permit action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

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

9VAC25-670-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the ~~board~~ department through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the ~~board~~ department on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.

9VAC25-670-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016, will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-670-100 is effective August 2, 2016, and expires August 1, 2026. Any coverage that is granted pursuant to 9VAC25-670-30 shall remain in full

force and effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or revoked on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, 2026, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~ department.

C. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~ department.

9VAC25-670-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities, provided that:

1. The applicant submits notification as required in 9VAC25-670-50 and 9VAC25-670-60.

2. The applicant remits any required permit application fee.

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of this VWP general permit.

5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

a. Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the ~~board~~ department may at its discretion require a VWP individual permit for the project.

b. Where an access road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the ~~board~~ department may, at its discretion, require a VWP individual permit.

6. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.

7. When functions of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in a permanently maintained utility right-of-way, compensation shall be required for impacts outside of a 20-foot wide permanently maintained corridor. Compensation shall not be required for impacts within the 20-foot wide portion of permanently maintained corridor. For example, with a 50-foot wide, permanently maintained corridor, compensation on each side of the 20-foot portion would be required for impacts that occur between the 20-foot and the 50-foot marks.

8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-670-70, and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the following:

1. The construction, maintenance, or repair of utility lines, including outfall structures and the excavation, backfill, or bedding for utility lines provided there is no change in preconstruction contours.

2. The construction, maintenance, or expansion of a substation facility or pumping station associated with a power line or utility line.

3. The construction or maintenance of foundations for overhead utility line towers, poles, or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible.

4. The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the satisfaction of the ~~board~~ department that he qualifies for the waiver.

D. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE),

and for which the ~~board~~ department has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit unless (i) a state program general permit (SPGP) is required and granted for the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

F. When the ~~board~~ department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the ~~board~~ department may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-670-40. Exceptions to coverage.

A. Coverage under this VWP general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.

B. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to impact greater than one acre of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

D. The ~~board~~ department shall deny application for coverage under this VWP general permit to any applicant conducting activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

E. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

F. Coverage under this VWP general permit shall not be granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).

2. Any water withdrawal activities.

3. The pouring of wet or uncured concrete in state waters, unless the area is contained within a cofferdam or the work is performed in the dry or unless approved by the Department of Environmental Quality.

4. Dredging or maintenance dredging.

5. Any activity in surface waters that will impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

6. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata).

7. Any activity in tidal waters.

8. Impacts to state waters for the construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)).

9VAC25-670-50. Notification.

A. Notification to the ~~board~~ department will be required prior to commencing construction, as follows:

1. An application for coverage for proposed, permanent nontidal wetland or open water impacts greater than one-tenth acre or for proposed permanent nontidal stream bed impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-670-60 B. Compensatory mitigation may be required for all permanent impacts.

2. An application for the coverage for proposed, permanent nontidal wetland or open water impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this subsection:

a. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (hereafter "protected areas"), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-670-60 B. Compensatory mitigation may be required for all permanent impacts.

b. For all other projects, the application shall include the information required by subdivisions 1 through 7, 10, 11, 14, and 15 of 9VAC25-670-60 B and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-670-60 B 12.

B. The Department of Environmental Quality-approved application forms shall serve as an application for a VWP permit or VWP general permit coverage.

C. The ~~board~~ department will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Wildlife Resources regarding the presence of federal or state listed threatened and endangered species or designated critical habitat. Based upon consultation with these agencies, the ~~board~~ department may deny application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist the Department of Environmental Quality in reviewing and processing the application.

9VAC25-670-60. Application.

A. The applicant shall file a complete application in accordance with 9VAC25-670-50 and this section for coverage under this VWP general permit for impacts to surface waters from utility activities.

B. A complete application for VWP general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.

2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

3. If applicable, the authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.

4. The existing VWP general permit tracking number, if applicable.

5. Project name and proposed project schedule.

6. The following information for the project site location and any related permittee-responsible compensatory mitigation site:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay reservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination, when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

11. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

12. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage and functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of any water

control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 12 or in lieu thereof shall describe the intended protective mechanism or mechanisms that contains the information required below:

(1) A provision for access to the site;

(2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased, documentation from the approved mitigation bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.1-44.15:23 of the Code of Virginia.

13. Permit application fee. The applicant will be notified by the ~~board~~ department as to the appropriate fee for the project in accordance with 9VAC25-20.

14. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

15. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat

metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application by the appropriate DEQ office, the ~~board~~ department has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under the VWP general permit shall be approved or approved with conditions, or the application shall be denied, within 45 days of receipt of a complete application. If the ~~board~~ department fails to act within 45 days on a complete application, coverage under the VWP general permit shall be deemed granted.

1. In evaluating the application, the ~~board~~ department shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Application for coverage under the VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

2. The ~~board~~ department may place additional requirements on a project in order to grant coverage under this VWP general permit. However, the requirements must be consistent with this chapter.

E. Incomplete application.

1. Where an application for general permit coverage is not accepted as complete by the ~~board~~ department within 15 days of receipt, the ~~board~~ department shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or any report to the ~~board~~ department, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for the purposes of review but shall not require an additional permit application fee.

2. An incomplete application for general permit coverage may be administratively withdrawn from processing by the ~~board~~ department for failure to provide the required information after 60 days from the date of the latest written information request made by the ~~board~~ department. The ~~board~~ department shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

3. An applicant may request a suspension of application review by the ~~board~~ department, but requesting a suspension shall not preclude the ~~board~~ department from administratively withdrawing an incomplete application.

9VAC25-670-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the ~~board~~ department in advance of a planned change, and an application or request for modification of an authorization for coverage shall be reviewed according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project exceeds one acre of nontidal wetlands or open water or exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. VWP general permit coverage may be modified under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:

a. The additional impacts are proposed prior to impacting those additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work, unless otherwise prohibited by this chapter.

c. The permittee has provided sufficient documentation that the ~~board~~ department may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The ~~board~~ department recommends that the permittee verify that the project will not impact

any proposed threatened or endangered species or proposed critical habitat.

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-670-60 B 11.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-670-70. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the ~~board~~ department that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored in accordance with Part I A 3 and B 11 of 9VAC25-670-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-670-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed in subdivisions 1 and 2 of this subsection.

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-670-90. Termination of coverage.

A. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP

general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F ~~and § 62.1-44.15:02 of the Code of Virginia,~~ or without cause in accordance with 9VAC25-210-180 G ~~and § 62.1-44.15:02~~.

9VAC25-670-100. VWP general permit.

VWP GENERAL PERMIT NO. WP2 FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the ~~board~~ department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-670-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-670-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural

stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in such a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact areas where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted steam flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a trench drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-670-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has

been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the ~~board~~ department prior to a construction activity in permitted impact areas. The ~~board~~ department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the ~~board~~ department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the ~~board~~ department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the ~~board~~ department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at a minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year

that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the ~~board~~ department. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-670-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities,

including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the fifth monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the ~~board~~ department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~ department or any duly authorized agent of the ~~board~~ department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for

inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the ~~board~~ department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The ~~board~~ department does not within the 15 days notify the current and new permittees of ~~its~~ the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-670-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the ~~board~~ department after public notice and opportunity for a hearing ~~pursuant to § 62.1-44.15:02 of the Code of Virginia~~ in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the ~~board~~ department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The ~~board~~ department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the ~~board~~ department shall follow the applicable procedures for termination under ~~§§ 62.1-44.15:02~~ 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP

general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the ~~board~~ department any information that the ~~board~~ department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the ~~board~~ department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the ~~board~~ department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the ~~board~~ department at any time.

4. Records of monitoring information shall include, as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-670-27.

VA.R. Doc. No. R23-7177; Filed September 9, 2022, 2:32 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (amending 9VAC25-680-10 through 9VAC25-680-30, 9VAC25-680-40, 9VAC25-680-50, 9VAC25-680-60, 9VAC25-680-80, 9VAC25-680-90, 9VAC25-680-100).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.)

Effective Date: November 9, 2022.

Agency Contact: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email dave.davis@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," removing delegation of authority provisions, and correcting Code of Virginia citations.

9VAC25-680-10. 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 Virginia Water Protection Permit Program Regulation (9VAC25-210) unless a different meaning is required by the context or is indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

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

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

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

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent public and economic utility.

"Linear transportation project" means a project for the construction, expansion, modification or improvement of features such as, but not limited to, roadways, railways, trails, bicycle and pedestrians paths, and airport runways and taxiways, including all attendant features both temporary and permanent. Nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars are not included in this definition.

"Notice of project completion" means a statement submitted by the permittee or authorized agent that the authorized activities and any required compensatory mitigation have been completed.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single water body) and to multiple crossings of the same water body at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) and that is

founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

"Up to 300 linear feet" means 300.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to 1,500 linear feet" means 1,500.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to one-tenth acre" means 0.10 acre (4,356 square feet) or less.

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of any gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-680-15. Statewide information requirements.

The ~~board~~ department may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the ~~board~~ department.

9VAC25-680-20. Purpose~~; delegation of authority~~.

~~A.~~ The purpose of this chapter is to establish VWP General Permit Number WP3 under 9VAC25-210 to govern permanent and temporary impacts related to the construction and maintenance of Virginia Department of Transportation (VDOT) or other linear transportation projects. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the ~~board~~ department. Coverage, coverage with conditions, or application denial by the ~~board~~ department shall constitute the VWP general permit action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

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

9VAC25-680-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the ~~board~~ department through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the ~~board~~ department on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.

9VAC25-680-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016, will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-680-100 is effective August 2, 2016, and expires August 1, 2026. Any coverage that is granted pursuant to 9VAC25-680-30 shall remain in full force and effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or revoked on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, 2026, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~ department.

C. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~ department.

9VAC25-680-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for linear transportation projects, provided that:

1. The applicant submits notification as required in 9VAC25-680-50 and 9VAC25-680-60.

2. The applicant remits any required permit application fee.

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of coverage under this VWP general permit.

5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of state waters (several single and complete projects), the ~~board~~ department may at its discretion require a VWP individual permit.

b. For the purposes of this chapter, when an interchange has multiple crossings of state waters, the entire interchange shall be considered the single and complete project.

6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

7. Dredging does not exceed 5,000 cubic yards.

8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-680-70, and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, bicycle and pedestrian paths, and airport runways and taxiways, including all attendant features both temporary and permanent).

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the satisfaction of the ~~board~~ department that he qualifies for the waiver.

D. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the ~~board~~ department has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit, unless a state program general permit (SPGP) is required and granted for the activity or impact.

F. When the ~~board~~ department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the ~~board~~ department may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-680-40. Exceptions to coverage.

A. Coverage under this VWP general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.

B. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to impact greater than two acres of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. This VWP general permit cannot be used for nonlinear features commonly associated with transportation projects, such as, but not limited to, vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

D. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

E. The ~~board~~ department shall deny application for coverage under this VWP general permit to any applicant conducting activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that

cause more than minimal degradation of the water quality of a stream.

G. Coverage under this VWP general permit shall not be granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).

2. The construction of an irrigation impoundment on a perennial stream.

3. Any water withdrawal activities.

4. The location of animal feeding operations or waste storage facilities in state waters.

5. The pouring of wet or uncured concrete in state waters, unless the area is contained within a cofferdam or the work is performed in the dry or unless approved by the Department of Environmental Quality.

6. Return flow discharges from dredge disposal sites.

7. Overboard disposal of dredge materials.

8. Dredging in marinas.

9. Dredging of shellfish areas, submerged aquatic vegetation beds or other highly productive areas.

10. Federal navigation projects.

11. Any activity in surface waters that will impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

12. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata).

13. Any activity in tidal waters.

9VAC25-680-50. Notification.

A. Notification to the ~~board~~ department will be required prior to commencing construction, as follows:

1. When the Virginia Department of Transportation is the applicant for coverage under this VWP general permit, the notification requirements shall be in accordance with this section and 9VAC25-680-60, unless otherwise authorized by the Department of Environmental Quality.

2. An application for coverage for proposed, permanent nontidal wetland or open water impacts greater than one-tenth acre or for proposed permanent nontidal stream bed impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-680-60 B. Compensatory mitigation may be required for all permanent impacts.

3. An application for coverage for proposed, permanent nontidal wetland or open water impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up to 300 linear feet shall be submitted in accordance with either subdivision 3 a or 3 b of this subsection:

a. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (hereafter "protected areas"), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-680-60 B. Compensatory mitigation may be required for all permanent impacts.

b. For all other projects, the application shall include the information required by subdivisions 1 through 7, 11, 12, 15, and 16 of 9VAC25-680-60 B and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-680-60 B 13.

B. The Department of Environmental Quality-approved application forms shall serve as an application for a VWP permit or VWP general permit coverage.

C. The ~~board~~ department will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of Wildlife Resources regarding the presence of federal or state listed threatened and endangered species or designated critical habitat. Based upon consultation with these agencies, the ~~board~~

department may deny application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist the Department of Environmental Quality in reviewing and processing the application.

9VAC25-680-60. Application.

A. Applications shall be filed with the ~~board~~ department as follows:

1. The applicant shall file a complete application in accordance with 9VAC25-680-50 and this section for coverage under this VWP general permit for impacts to surface waters from linear transportation projects.

2. The VDOT may use its monthly IACM process for submitting applications.

B. A complete application for VWP general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.

2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

3. If applicable, authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.

4. The existing VWP general permit tracking number, if applicable.

5. Project name and proposed project schedule.

6. The following information for the project site location, and any related permittee-responsible compensatory mitigation site:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. Materials assessment. Upon request by the ~~board~~ department, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. The applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

11. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

c. Open water impacts identified according to their Cowardin classification; and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

12. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

13. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage and functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv)

the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended protective mechanism or mechanisms that contains the information required below:

(1) A provision for access to the site;

(2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased, documentation from the approved mitigation bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.1-44.15:23 of the Code of Virginia.

14. Permit application fee. The applicant will be notified by the ~~board~~ department as to the appropriate fee for the project in accordance with 9VAC25-20.

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application from the Department of Transportation for a road or highway construction project by the appropriate DEQ office, the ~~board~~ department has 10 business days, pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the information requested in subsection B of this section is complete or inform the Department of Transportation that additional information is required to make the application complete. Upon receipt of an application from other applicants for any type of project, the ~~board~~ department has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Pursuant to § 33.2-258 of the Code of Virginia, coverage under this VWP general permit for Department of Transportation road or highway construction projects shall be approved or approved with conditions, or the application shall be denied, within 30 business days of receipt of a complete application. For all other projects, coverage under this VWP general permit shall be approved or approved with conditions, or the application shall be denied, within 45 days of receipt of a complete application. If the ~~board~~ department fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed granted.

1. In evaluating the application, the ~~board~~ department shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The ~~board~~ department may place additional requirements on a project in order to grant coverage under this VWP general permit. However, the requirements must be consistent with this chapter.

E. Incomplete application.

1. Where an application for general permit coverage is not accepted as complete by the ~~board~~ department within the applicable 10 or 15 days of receipt, the ~~board~~ department shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in any report to the ~~board~~ department, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for the purposes of review but shall not require an additional permit application fee.

2. An incomplete application for general permit coverage may be administratively withdrawn from processing by the ~~board~~ department for failure to provide the required information after 60 days from the date of the latest written information request made by the ~~board~~ department. The ~~board~~ department shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

3. An applicant may request a suspension of application review by the ~~board~~ department, but requesting a suspension shall not preclude the ~~board~~ department from administratively withdrawing an incomplete application.

9VAC25-680-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the ~~board~~ department in advance of a planned change, and an application or request for modification to coverage shall be reviewed according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project exceeds two acres of nontidal wetlands or open water or exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. VWP general permit coverage may be modified under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:

a. The additional impacts are proposed prior to impacting the additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work, unless otherwise prohibited in this chapter.

c. The permittee has provided sufficient documentation that the ~~board~~ department may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The ~~board~~ department recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-680-60 B 12.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-680-70. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the ~~board~~ department that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored in accordance with Parts I A 3 and B 11 of 9VAC25-680-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-680-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed in subdivisions 1 and 2 of this subsection.

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-680-90. Termination of coverage.

A. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or for coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F ~~and § 62.1-44.15:02 of the Code of Virginia,~~ or without cause in accordance with 9VAC25-210-180 G ~~and § 62.1-44.15:02~~.

9VAC25-680-100. VWP general permit.

VWP GENERAL PERMIT NO. WP3 FOR LINEAR TRANSPORTATION PROJECTS UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the ~~board~~ department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-680-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless specifically approved by the Department of Environmental Quality on a case-by-case basis and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipe and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes or culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained

within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is

stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the

dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-680-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensatory mitigation plan shall be submitted to and approved by the ~~board~~ department prior to a construction activity in permitted impact areas. The ~~board~~ department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the ~~board~~ department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the ~~board~~ department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the ~~board~~ department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for the Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the ~~board~~ department. All vegetation removal shall be done by manual means only, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the

impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-680-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site constructions activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure

that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit that may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the ~~board~~ department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credentials, the permittee shall allow the ~~board~~ department or any duly authorized agent of the ~~board~~ department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the ~~board~~ department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The ~~board~~ department does not within 15 days notify the current and new permittees of ~~its~~ the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-680-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the ~~board~~ department after public notice and opportunity for a hearing ~~pursuant to § 62.1-44.15:02 of the Code of Virginia~~ in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to

disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the ~~board~~ department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The ~~board~~ department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the ~~board~~ department shall follow the applicable procedures for termination under ~~§§ 62.1-44.15:02~~ 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit authorization or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain

compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the ~~board~~ department any information that the ~~board~~ department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the ~~board~~ department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the ~~board~~ department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the ~~board~~ department at any time.

4. Records of monitoring information shall include, as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after October 1, 2001, for all other projects, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-680-27.

VA.R. Doc. No. R23-7178; Filed September 9, 2022, 2:32 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-10 through 9VAC25-690-30, 9VAC25-690-40, 9VAC25-690-50, 9VAC25-690-60, 9VAC25-690-80, 9VAC25-690-90, 9VAC25-690-100).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: November 9, 2022.

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Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily

change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," removing delegation of authority provisions, and correcting Code of Virginia citations.

9VAC25-690-10. 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 Virginia Water Protection Permit Program Regulation (9VAC25-210) unless a different meaning is required by the context or is indicated below.

"Bank protection" means measures employed to stabilize channel banks and combat existing erosion problems. Such measures may include the construction of riprap revetments, sills, rock vanes, beach nourishment, breakwaters, bulkheads, groins, spurs, levees, marsh toe stabilization, anti-scouring devices, and submerged sills.

"Bioengineering method" means a biological measure incorporated into a facility design to benefit water quality and minimize adverse effects to aquatic resources, to the maximum extent practicable, for long-term aquatic resource protection and improvement.

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

"Coverage" means authorization to conduct a project in accordance with a VWP general permit.

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

"Histosols" means organic soils that are often called mucks, peats, or mucky peats. The list of histosols in the Commonwealth includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock. Histosols are identified in the Hydric Soils of the United States lists generated by the U.S. Department of Agriculture Natural Resources Conservation Service.

"Independent utility" means a test to determine what constitutes a single and complete project. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a phased development project that depend upon other phases of the project do not have independent utility. Portions of a phased development project that would be constructed even if the other phases are not built can be considered as separate single complete projects with independent public and economic utility.

"In-stream mining" means activities or operations that remove accumulated sand, gravel, and mineral deposits directly from stream channels using equipment such as, but not limited to, hydraulic dredges, clamshell dredges, or draglines for the sole purpose of processing and selling the material. In-stream mining does not include dredging activities, whose main purpose is to maintain channels and harbors for navigation, nor does it include the recovery of spilled material, such as sand, gravel, and aggregate, that was inadvertently spilled into a waterway during loading activities.

"Notice of project completion" means a statement submitted by the permittee or authorized agent that the authorized activities and any required compensatory mitigation have been completed.

"Phased development" means more than one project proposed for a single piece of property or an assemblage of contiguous properties under consideration for development by the same person, or by related persons, that will begin and be completed at different times. Depending on the relationship between the projects, (i) a phased development may be considered a single and complete project, or (ii) each project may be considered a single and complete project if each project has independent utility, as defined in this subsection.

"Recreational facility" means a facility that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours.

"Single and complete project" means the total project proposed or accomplished by a person, which also has independent utility, as defined in this section. For linear projects, the "single and complete project" (e.g., a single and complete crossing) will apply to each crossing of a separate surface water (e.g., a single water body) and to multiple crossings of the same water body at separate and distinct locations. Phases of a project that have independent public and economic utility may each be considered single and complete.

"State program general permit (SPGP)" means a general permit issued by the Department of the Army in accordance with 33 USC § 1344 and 33 CFR 325.5(c)(3) and that is founded on a state program. The SPGP is designed to avoid duplication between the federal and state programs.

"Up to 300 linear feet" means 300.00 linear feet or less as measured along the center of the main channel of the stream segment.

"Up to 1,500 linear feet" means 1,500.00 linear feet or less, as measured along the center of the main channel of the stream segment.

"Up to one-tenth acre" means 0.10 acre (4,356 square feet) or less.

"Up to two acres" means 2.00 acres (87,120 square feet) or less.

"Utility line" means a pipe or pipeline for the transportation of a gaseous, liquid, liquefiable or slurry substance, for any purpose, and a cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages and radio and television communication. The term utility line does not include activities which drain a surface water to convert it to an upland, such as drainage tiles or french drains; however, it does apply to pipes conveying drainage from another area.

9VAC25-690-15. Statewide information requirements.

The ~~board~~ department may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's discharge on the quality of state waters or (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a VWP permit or general permit coverage shall provide the information requested by the ~~board~~ department.

9VAC25-690-20. Purpose~~; delegation of authority~~.

~~A.~~ The purpose of this chapter is to establish VWP General Permit Number WP4 under 9VAC25-210 to govern permanent and temporary impacts related to the construction and maintenance of development activities and to activities directly associated with aggregate mining (e.g., sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Energy. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the ~~board~~ department. Coverage, coverage with conditions, or application denial by the ~~board~~ department shall constitute the VWP general permit action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

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

9VAC25-690-25. Authorization for coverage under VWP general permit effective August 1, 2006.

A. All complete applications or notifications received by the ~~board~~ department through 11:59 p.m. on August 1, 2016, shall be processed in accordance with the VWP general permit regulation in effect August 1, 2006, through August 1, 2016. If the application or notification is incomplete or if there is not adequate time as allowed by § 62.1-44.15:21 of the Code of Virginia to make a completeness determination, the applicant shall reapply for coverage under the VWP general permit effective August 2, 2016, or apply for a VWP individual permit, including payment of any required permit application fee. No refund of permit application fees shall be made.

B. VWP general permit authorizations granted through 11:59 p.m. on August 1, 2016, shall remain in full force and effect until 11:59 p.m. on the expiration date stated on the VWP authorization cover page, unless otherwise revoked or terminated or unless a notice of project completion is received by the ~~board~~ department on or before that date. Any permittee that desires to continue an authorized activity beyond the stated expiration date must reapply for coverage under the VWP general permit effective August 2, 2016, pursuant to its terms, standards, and conditions, or apply for a VWP individual permit, including payment of any required permit application fee. This section shall only apply to permittees holding valid authorizations for coverage granted under the VWP general permit effective August 1, 2006, through August 1, 2016.

9VAC25-690-27. VWP general permit coverage; transition; continuation.

A. All applications or notifications received on or after August 2, 2016, will be processed in accordance with the VWP general permit regulation effective August 2, 2016.

B. The general permit in 9VAC25-690-100 is effective August 2, 2016, and expires August 1, 2026. Any coverage that is granted pursuant to 9VAC25-690-30 shall remain in full force and effect until 11:59 p.m. on August 1, 2026, unless the general permit coverage is terminated or revoked on or before this date. Where a permittee that has received general permit coverage desires to continue or complete the authorized activities beyond August 1, 2026, the permittee shall reapply for new general permit coverage or for a VWP individual permit, including payment of any required permit application fee. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~ department.

C. Application may be made at any time for a VWP individual permit in accordance with 9VAC25-210. Activities in surface waters requiring a permit shall not commence or continue until VWP general permit coverage is granted or a VWP individual permit is issued by the ~~board~~ department.

9VAC25-690-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for general development and certain mining activities, provided that:

1. The applicant submits notification as required in 9VAC25-690-50 and 9VAC25-690-60.

2. The applicant remits any required permit application fee.

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general

permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.

5. Impacts, both temporary and permanent, result from a single and complete project including all attendant features.

a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the ~~board~~ department may, at its discretion, require a VWP individual permit.

b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.

6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

7. Dredging does not exceed 5,000 cubic yards.

8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-690-70, and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the following:

1. Residential, commercial, institutional. The construction or expansion of building foundations, building pads, and attendant features for residential, commercial, and institutional development activities.

a. Residential developments include both single and multiple units.

b. Commercial developments include retail stores, industrial facilities, restaurants, business parks, office buildings, and shopping centers.

c. Institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

d. Attendant features include roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields, and golf courses). Attendant features must be necessary for the use and maintenance of the structures.

2. Recreational facilities. The construction or expansion of recreational facilities and small support facilities.

a. Recreational facilities include hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel-lift piers, etc.) associated with recreational facilities are also included.

b. Recreational facilities do not include as a primary function the use of motor vehicles, buildings, or impervious surfaces.

c. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.

d. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include maintenance storage buildings and stables.

e. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, or new ski areas.

f. The recreational facility must have an adequate water quality management plan, such as a stormwater management plan, to ensure that the recreational facility results in no substantial adverse effects to water quality.

3. Stormwater management facilities. The construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and the maintenance dredging of existing stormwater management facilities.

a. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, traps, and other facilities designed to reduce pollutants in stormwater runoff.

b. The stormwater management facility must:

(1) To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates).

(2) Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters.

(3) Withstand expected high flows.

(4) To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions.

(5) To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows.

(6) Be designed using best management practices (BMPs) and watershed protection techniques. Examples of such BMPs are described in the Virginia Stormwater Management Handbook and include forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.

c. Maintenance excavation shall be in accordance with the original facility maintenance plan, or when unavailable, an alternative plan approved by the Department of Environmental Quality, and shall not exceed to the maximum extent practicable, the character, scope, or size detailed in the original design of the facility.

4. Mining facilities. The construction or expansion of mining facilities and attendant features for a single and complete project. This general permit may not be used to authorize impacts from in-stream mining activities or operations as defined in 9VAC25-690-10.

a. Mining facilities include activities directly associated with aggregate mining (e.g., sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Energy.

b. Attendant features are authorized provided they are directly related to the mining facility, and include access road construction, parking lots, offices, maintenance shops, garages, and stormwater management facilities.

c. Both direct impacts (e.g., footprints of all fill areas, road crossings, sediment ponds, and stormwater management facilities; mining through state waters; stockpile of overburden, and excavation) and indirect impacts (e.g., diversion of surface water and reach of state waters affected by sediment pond pool and sediment transport) shall be considered when granting coverage under this general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the ~~board~~ department, any person claiming this waiver shall demonstrate to the satisfaction of the ~~board~~ department that he qualifies for the waiver.

D. Coverage under VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the ~~board~~ department has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit unless (i) a state program general permit (SPGP) is required and granted for the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

F. Coverage under a permit issued by the Department of Energy under the Virginia Coal Surface Mining Control and Reclamation Act, Chapter 10 (§ 45.2-1000 et seq.) of Title 45.2 of the Code of Virginia, where such permit authorizes activities that may be permitted by this chapter and contains a mitigation plan for the impacts from the mining activities, shall also constitute coverage under this VWP general permit.

G. When the ~~board~~ department determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the ~~board~~ department may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-690-40. Exceptions to coverage.

A. Coverage under this VWP general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-210-60.

B. Coverage under this VWP general permit cannot be used in combination with coverage under other VWP general permits in order to impact greater than two acres of nontidal wetlands or open water or greater than 1,500 linear feet of nontidal stream bed. Granting coverage under this VWP general permit more than once for a single and complete project is prohibited, except when the cumulative impact to surface waters does not exceed the limits specified here.

C. This VWP general permit cannot be used for an activity in a phased development that would cause the aggregate total loss of nontidal wetlands or open water in the subdivision to exceed two acres or to exceed 1,500 linear feet of nontidal stream bed.

D. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9VAC25-260).

E. The ~~board~~ department shall deny application for coverage under this VWP general permit to any applicant conducting activities that cause, may reasonably be expected to cause, or may be contributing to a violation of water quality standards, including discharges or discharge-related activities that are

likely to significantly affect aquatic life, or for activities that together with other existing or proposed impacts to wetlands will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

F. This VWP general permit does not authorize activities that cause more than minimal changes to the peak hydraulic flow characteristics, that significantly increase flooding, or that cause more than minimal degradation of the water quality of a stream.

G. Coverage under this VWP general permit shall not be granted for:

1. Construction of a stormwater management facility in perennial streams or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).

2. The construction of an irrigation impoundment on a perennial stream.

3. Any water withdrawal activities.

4. The location of animal feeding operations or waste storage facilities in state waters.

5. The pouring of wet or uncured concrete in state waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless approved by the Department of Environmental Quality.

6. Return flow discharges from dredge disposal sites.

7. Overboard disposal of dredge materials.

8. Dredging in marinas.

9. Dredging of shellfish areas, submerged aquatic vegetation beds, or other highly productive areas.

10. Federal navigation projects.

11. The construction of new ski areas.

12. Any activity in surface water that will impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species in accordance with the following:

a. As pursuant to § 29.1-564 of the Code of Virginia, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any fish or wildlife appearing on any list of threatened or endangered species published by the United States Secretary of the Interior pursuant to the provisions of the federal Endangered Species Act of 1973 (P.L. 93-205), or any modifications or amendments thereto, is prohibited except as provided in § 29.1-568 of the Code of Virginia.

b. As pursuant to § 29.1-566 of the Code of Virginia and 4VAC15-20-130 B and C, the taking, transportation, processing, sale, or offer for sale within the Commonwealth of any state listed endangered or threatened species is prohibited except as provided in § 29.1-568 of the Code of Virginia.

13. Any activity in wetlands composed of 10% or more, singularly or in combination, based upon either basal area or percent areal cover in the area of impact, in a vegetative stratum: Atlantic white cedar (Chamaecyparis thyoides), bald cypress (Taxodium distichum), water tupelo (Nyssa aquatica), or overcup oak (Quercus lyrata).

14. Any activity in wetlands underlain by histosols.

15. Any activity in tidal waters.

16. Impacts to state waters for the construction of any natural gas transmission pipeline that is greater than 36 inches inside diameter pursuant to a certificate of public convenience and necessity under § 7c of the federal Natural Gas Act (15 USC § 717f(c)).

9VAC25-690-50. Notification.

A. Notification to the ~~board~~ department will be required prior to commencing construction as follows:

1. An application for coverage for proposed, permanent nontidal wetland or open water impacts greater than one-tenth acre or for proposed permanent nontidal stream bed impacts greater than 300 linear feet shall include all information pursuant to 9VAC25-690-60 B. Compensatory mitigation may be required for all permanent impacts.

2. An application for coverage for proposed, permanent nontidal wetland or open water impacts up to one-tenth acre or for proposed, permanent nontidal stream bed impacts up to 300 linear feet shall be submitted in accordance with either subdivision 2 a or 2 b of this subsection:

a. For any proposed project in wetlands, open water, streams, or compensatory mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (hereafter "protected areas"), when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, the application shall include all of the information required by 9VAC25-690-60 B. Compensatory mitigation may be required for all permanent impacts.

b. For all other projects, the application shall include the information required by subdivisions 1 through 7, 11, 12, 15, and 16 of 9VAC25-690-60 B, and documentation that verifies the quantity and type of impacts. Compensatory mitigation may be required for all permanent impacts once the notification limits of one-tenth acre wetlands or open water, or 300 linear feet of stream bed, are exceeded, and if required, the application shall include the information in 9VAC25-690-60 B 13.

B. The Department of Environmental Quality-approved application forms shall serve as an application for a VWP permit or VWP general permit coverage.

C. The ~~board~~ department will determine whether the proposed activity requires coordination with the U.S. Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services and the Virginia Department of Wildlife Resources regarding the presence of federal or state listed threatened and endangered species or designated critical habitat. Based upon consultation with these agencies, the ~~board~~ department may deny application for coverage under this general permit. The applicant may also consult with these agencies prior to submitting an application. Species or habitat information that the applicant provides will assist the Department of Environmental Quality in reviewing and processing the application.

9VAC25-690-60. Application.

A. The applicant shall file a complete application in accordance with 9VAC25-690-50 and this section for coverage under this VWP general permit for impacts to surface waters from development and certain mining activities.

B. A complete application for VWP general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.

2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

3. If applicable, the authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.

4. The existing VWP general permit tracking number, if applicable.

5. Project name and proposed project schedule.

6. The following information for the project site location, and any related permittee-responsible compensatory mitigation site:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. Materials assessment. Upon request by the ~~board~~ department, the applicant shall provide evidence or

certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. The applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

11. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

12. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the ~~board~~ department that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

13. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage and functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an

application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended protective mechanism or mechanisms that contains the information required below:

(1) A provision for access to the site;

(2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased, documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.1-44.15:23 of the Code of Virginia.

14. Permit application fee. The applicant will be notified by the ~~board~~ department as to the appropriate fee for the project in accordance with 9VAC25-20.

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

a. Wetland impacts per each single and complete project total 1.00 acre or less; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits

at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:

a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application by the appropriate DEQ office, the ~~board~~ department has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under this VWP general permit shall be approved or approved with conditions, or the application shall be denied, within 45 days of receipt of a complete application. If the ~~board~~ department fails to act within 45 days on a complete application, coverage under this VWP permit general permit shall be deemed granted.

1. In evaluating the application, the ~~board~~ department shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The ~~board~~ department may place additional requirements on a project in order to grant coverage under this VWP general permit. However, the requirements must be consistent with this chapter.

E. Incomplete application.

1. Where an application for general permit coverage is not accepted as complete by the ~~board~~ department within 15 days of receipt, the ~~board~~ department shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in any report to the ~~board~~ department, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purposes of review but shall not require an additional permit application fee.

2. An incomplete application for general permit coverage may be administratively withdrawn from processing by the ~~board~~ department for failure to provide the required information after 60 days from the date of the latest written information request made by the ~~board~~ department. The ~~board~~ department shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

3. An applicant may request a suspension of application review by the ~~board~~ department, but requesting a suspension shall not preclude the ~~board~~ department from administratively withdrawing an incomplete application.

9VAC25-690-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the ~~board~~ department in advance of a planned change, and an application or request for modification to coverage shall be reviewed according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project exceeds two acres of nontidal wetlands or open water exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. VWP general permit coverage may be modified under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:

a. The additional impacts are proposed prior to impacting the additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work, unless otherwise prohibited in this chapter.

c. The permittee has provided sufficient documentation that the ~~board~~ department may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The ~~board~~ department recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-690-60 B 12.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-690-70. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the ~~board~~ department that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored in accordance with Parts I A 3 and B 11 of 9VAC25-690-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impacts amounts as specified in 9VAC25-690-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed by subdivisions 1 and 2 of this subsection.

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-690-90. Termination of coverage.

A. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number of the permittee;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP

general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

B. VWP general permit coverage may be terminated for cause in accordance with 9VAC25-210-180 F ~~and § 62.1-44.15:02 of the Code of Virginia,~~ or without cause in accordance with 9VAC25-210-180 G ~~and § 62.1-44.15:02~~.

9VAC25-690-100. VWP general permit.

VWP GENERAL PERMIT NO. WP4 FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the ~~board~~ department in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-690-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-690-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not

be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the

channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized the Department of Environmental Quality. Restoration shall be the seeding of planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive specifies identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the

dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-690-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the ~~board~~ department prior to a construction activity in permitted impact areas. The ~~board~~ department shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the ~~board~~ department shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the ~~board~~ department.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the ~~board~~ department.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the wetlands compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site or sites without prior authorization by the ~~board~~ department. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the

impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-690-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-690-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted by in accordance with 9VAC25-690-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and

soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

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

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

B. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent impacts in violation of the VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the ~~board~~ department or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credential, the permittee shall allow the ~~board~~ department or any duly authorized agent of the ~~board~~ department, at reasonable times and under reasonable circumstances, to enter upon the permittee's property, public or private, and have access to inspect and copy any records that must be kept as part of the VWP general permit conditions; to inspect any facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; and to sample or monitor any substance, parameter, or activity for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the ~~board~~ department of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The ~~board~~ department does not within 15 days notify the current and new permittees of ~~its~~ the board's intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-690-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the ~~board~~ department after public notice and opportunity for a hearing ~~pursuant to § 62.1-44.15:02 of the Code of Virginia~~ in accordance with 9VAC25-210-180. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the ~~board~~ department that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The ~~board~~ department may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the ~~board~~ department shall follow the applicable procedures for termination under ~~§§ 62.1-44.15:02~~ 9VAC25-210-180 and § 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the ~~board~~ department. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which VWP general permit coverage has been granted in order to maintain

compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the ~~board~~ department any information that the ~~board~~ department may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the ~~board~~ department, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the ~~board~~ department prior to commencing construction.

Q. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP general permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general permit expiration. This period may be extended by request of the ~~board~~ department at any time.

4. Records of monitoring information shall include, as appropriate:

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

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:

a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.

VA.R. Doc. No. R23-7179; Filed September 9, 2022, 2:32 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters (amending 9VAC25-800-10, 9VAC25-800-20).**

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

Effective Date: November 9, 2022.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2666, FAX (804) 698-4178, or email peter.sherman@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State

Water Control Board to the Department of Environmental Quality.

9VAC25-800-10. Definitions.

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

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current or past environmental factors that are or have been demonstrated to be conducive to pest emergence or growth, as well as past or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the federal Environmental Protection Agency (EPA) that will prevent, destroy, repel, or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of § 2(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance (40 CFR 174.3).

"Adverse incident" means an unusual or unexpected incident that the operator observes upon inspection or of which otherwise becomes aware, in which there is evidence that:

1. A person or nontarget organism has likely been exposed to a pesticide residue; and

2. The person or nontarget organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within surface waters on nontarget plants, fish, or wildlife that are unusual or unexpected (e.g., effects are to organisms not described on the pesticide product labels or not expected to be present) as a result of exposure to a pesticide residue and may include:

1. Distressed or dead juvenile and small fishes;

2. Washed up or floating fish;

3. Fish swimming abnormally or erratically;

4. Fish lying lethargically at water surface or in shallow water;

5. Fish that are listless or nonresponsive to disturbance;

6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants; and

7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals (e.g., vomiting, lethargy) that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to surface waters that are temporally and spatially related to exposure to a pesticide residue.

"Biological control" means organisms that can be introduced to sites, such as herbivores, predators, parasites, and hyperparasites.

"Biological pesticides" or "biopesticides" includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants (PIP).

1. "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:

a. Is a eukaryotic microorganism, including protozoa, algae, and fungi;

b. Is a prokaryotic microorganism, including Eubacteria and Archaebacteria; or

c. Is a parasitically replicating microscopic element, including viruses.

2. "Biochemical pesticide" means a pesticide that:

a. Is a naturally occurring substance or structurally similar and functionally identical to a naturally occurring substance;

b. Has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically derived biochemical pesticide, is equivalent to a naturally occurring substance that has such a history; and

c. Has a nontoxic mode of action to the target pests.

3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce thereof.

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

"Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Declared pest emergency situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than 10 days after identification of the need for pest control. This public declaration may be based on:

1. Significant risk to human health;

2. Significant economic loss; or

3. Significant risk to:

a. Endangered species;

b. Threatened species;

c. Beneficial organisms; or

d. The environment.

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

"Discharge of a pollutant" means the addition of any "pollutant" or combination of pollutants to surface waters from any point source, or the addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) as amended.

"Impaired water" or "water quality impaired water" or "water quality limited segment" means any stream segment where the water quality does not or will not meet applicable water quality standards, even after the application of technology-based effluent limitations required by §§ 301(b) and 306 of the Clean Water Act (CWA) (33 USC § 1251 et seq. as of 1987). Impaired waters include both impaired waters with approved or established TMDLs, and impaired waters for which a TMDL has not yet been approved or established.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by EPA), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

"Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter:

1. Upon the pesticide or device or any of its containers or wrappers;

2. Accompanying the pesticide or device at any time; or

3. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Virginia Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.

"Mechanical or physical methods" means mechanical tools or physical alterations of the environment for pest prevention or removal.

"Minimize" means to reduce or eliminate pesticide discharges to surface waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Nontarget organisms" means the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Operator" means any person involved in the application of a pesticide that results in a discharge to surface waters that meets either or both of the following two criteria:

1. The person who has control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or

2. The person who performs the application of a pesticide or who has day-to-day control of the application (e.g., they are authorized to direct workers to carry out those activities that result in discharges to surface waters).

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

"Pest" means any deleterious organism that is:

1. Any vertebrate animal other than man;

2. Any invertebrate animal excluding any internal parasite of living man or other living animals;

3. Any plant growing where not wanted, and any plant part such as a root; or

4. Any bacterium, virus, or other microorganisms, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(g)(1)), and cosmetics (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(i)).

Any organism classified by state or federal law or regulation as endangered or threatened shall not be deemed a pest for the purposes of this chapter.

"Pest management area" means the area of land, including any water, for which pest management activities covered by this permit are conducted.

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards, and recommended industry practices related to the application of pesticides, relevant legal requirements, and other provisions that a prudent operator would implement to reduce or eliminate pesticide discharges to surface waters.

"Pesticide" means:

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner of Agriculture and Consumer Services shall declare to be a pest;

2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

3. Any substance which is intended to become an active ingredient thereof.

Pesticides that are used or applied shall only be those that are approved and registered for use by the Virginia Department of Agriculture and Consumer Services.

"Pesticide product" means a pesticide in the particular form (including active and inert ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide research and development" means activities undertaken on a systematic basis to gain new knowledge (research) or apply research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development).

"Pesticide residue" means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, or container from which pollutants are or may be discharged. This includes biological pesticides or chemical pesticides that leave a residue coming from a container or nozzle of a pesticide application device. This term does not include return flows from irrigated agriculture or agricultural stormwater run-off.

"Pollutant" means biological pesticides and any pesticide residue resulting from use of a chemical pesticide.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. That are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

Surface waters do not include wastewater treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (CWA) and the law. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of

the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"Target pest" means the organism toward which pest management measures are being directed.

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

"Treatment area" means the area of land including any waters, or the linear distance along water or water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.

Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Treatment area calculations for pesticide applications that occur at water's edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied.

"VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.

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

9VAC25-800-20. Purpose; ~~delegation of authority;~~ effective date of permit.

A. This general permit regulation governs discharges resulting from the application of pesticides to surface waters.

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

~~C.~~ This VPDES general permit will become effective on March 1, 2019, and expire on February 29, 2024.

VA.R. Doc. No. R23-7277; Filed September 9, 2022, 2:34 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-10, 9VAC25-820-20).**

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

Effective Date: November 9, 2022.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 836-2321, FAX (804) 698-4178, or email allan.brockenbrough@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-820-10. Definitions.

Except as defined below, the words and terms used in this chapter shall have the meanings defined in the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Annual mass load of total nitrogen" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by § 62.1-44.19:17 of the Code of Virginia.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

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

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a facility, as determined by the specific geographic location of the facility, to account for attenuation that occurs during riverine transport between the facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery factors with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall be considered to be equal to 1.00.

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

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

"Eastern Shore trading ratio" means the ratio of pounds of point source credits from another tributary that can be acquired and applied by the owner of a facility in the Eastern Shore Basin for every pound of point source total nitrogen or total phosphorus discharged from the Eastern Shore Basin facility. Trading ratios are expressed in the form "credits supplied: credits received."

"Equivalent load" means:

2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.04 million gallons per day,

5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.1 million gallons per day, and

28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.5 million gallons per day.

"Existing facility" means a facility (i) subject to a current individual VPDES permit from which a discharge has commenced or for which its owner has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) for the treatment works used to derive its wasteload allocation on or before July 1, 2005, or (ii) for which the owner has a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. Existing facility shall also mean and include any facility, not subject to an individual VPDES permit, for which its owner holds a separate wasteload allocation in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

"Expansion" or "expands" means (i) initiating construction at an existing treatment works after July 1, 2005, to increase design flow capacity, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued on or before July 1, 2005, or (ii) industrial production process changes or the use of new treatment products at industrial facilities that increase the annual mass load of total nitrogen or total phosphorus above the wasteload allocation.

"Facility" means a point source from which a discharge or proposed discharge of total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries exists. This term does not include confined animal feeding operations, discharges of storm water, return flows from irrigated agriculture, or vessels.

"General permit" means this general permit authorized by § 62.1-44.19:14 of the Code of Virginia.

"Industrial facility" means any facility (as defined above) other than sewage treatment works.

"Local water quality-based limitations" means limitations intended to protect local water quality including applicable total maximum daily load (TMDL) allocations, applicable Virginia Pollution Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in water quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other limitations as established by the State Water Control Board.

"New discharge" means any discharge from a facility that did not commence prior to July 1, 2005, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued to the facility on or before July 1, 2005.

"Nonsignificant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of less than 0.5 million gallons per day, or less than an equivalent load discharged from industrial facilities.

"Offset" means to acquire an annual wasteload allocation of total nitrogen or total phosphorus for a new or expanding facility to ensure that there is no net increase of nutrients into the affected tributary of the Chesapeake Bay.

"Permitted design capacity" or "permitted capacity" means the allowable load (pounds per year) assigned to an existing facility that is a nonsignificant discharger and that does not have a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. The permitted design capacity is calculated based on the design flow and installed nutrient removal technology (for sewage treatment works, or equivalent discharge from industrial facilities) at a facility that has either commenced discharge, or for which an owner has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) prior to July 1, 2005. This mass load is used for (i) determining whether the owner of the expanding facility must offset additional mass loading of nitrogen and phosphorus and (ii) determining whether the owner of the facility must acquire credits at the end of a calendar year. For the purpose of this chapter, owners of facilities that have installed secondary wastewater treatment (intended to achieve BOD and TSS monthly average concentrations equal to or less than 30 milligrams per liter) are assumed to achieve an annual average total nitrogen effluent concentration of 18.7 milligrams per liter and an annual average total phosphorus effluent concentration of 2.5 milligrams per liter. Permitted design capacities for facilities that, before July 1, 2005, were required to comply with more stringent nutrient limits shall be calculated using the more stringent values.

"Permitted facility" means a facility whose owner is authorized by this general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by this general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the wasteload allocation for a permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored annual mass load of total nitrogen discharged from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the wasteload allocation for a permitted facility specified as an annual mass load of total phosphorus and (ii) the monitored annual mass load of total phosphorus discharged from that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"Quantification level" or "QL" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

"Registration list" means a list maintained by the department indicating all facilities that are registered for coverage under this general permit, by tributary, including their wasteload allocations, permitted design capacities, and delivery factors as appropriate.

"Significant discharger" means the owner of (i) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line that was expected to be in operation by December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line that was expected to be in operation by December 31, 2010, with a design capacity of 0.1 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the department.

"Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the Potomac, Rappahannock, York, and James River Basins and the Eastern

Shore Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"VPDES" means Virginia Pollutant Discharge Elimination System.

"Wasteload allocation" means the most limiting of (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 of the Code of Virginia for new or expanded facilities; or (iii) applicable total nitrogen or total phosphorus wasteload allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-20. Purpose, applicability~~, delegation of authority~~.

A. This regulation fulfills the statutory requirement for the General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus discharges and nutrient trading in the Chesapeake Bay watershed issued by the board pursuant to the Clean Water Act (33 USC § 1251 et seq.) and § 62.1-44.19:14 of the Code of Virginia.

B. This general permit regulation governs owners of facilities holding individual VPDES permits or otherwise meeting the definition of "existing facility" that discharge or propose to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

~~C. The director may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.~~

VA.R. Doc. No. R23-7279; Filed September 9, 2022, 2:34 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-840. Erosion and Sediment Control Regulations (amending 9VAC25-840-10, 9VAC25-840-60, 9VAC25-840-90, 9VAC25-840-100; repealing 9VAC25-840-110).**

Statutory Authority: § 62.1-44.15:52 of the Code of Virginia.

Effective Date: November 9, 2022.

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

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-840-10. Definitions.

The following words and terms when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:51 of the Erosion and Sediment Control Law.

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

"Adequate channel" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections of the same.

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the VESCP authority in lieu of an erosion and sediment control plan.

"Applicant" means any person submitting an erosion and sediment control plan or an agreement in lieu of a plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

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

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

"Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

"Department" means the Department of Environmental Quality.

"Development" means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Dike" means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

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

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1- 506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Dormant" means denuded land that is not actively being brought to a desired grade or condition.

"Energy dissipator" means a nonerodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

"Erosion and Sediment Control Plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means a county, city or town.

"Natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Post-development" means conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Program administrator" means the person or persons responsible for administering and enforcing the erosion and sediment control program of a VESCP authority.

"Pre-development" means conditions at the time the erosion and sediment control plan is submitted to the VESCP authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

"Sediment basin" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

"Sediment trap" means a temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"Shore erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the department, or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

"Stormwater detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Twenty-five-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as exceedance probability with a 4.0% chance of being equaled or exceeded in any given year.

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

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

9VAC25-840-60. Maintenance and inspections.

A. All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.

B. Periodic inspections are required on all projects by the VESCP authority. The VESCP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or

2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:

a. Approved by the ~~board~~ department prior to implementation;

b. Established in writing;

c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and

d. Documented by inspection records.

9VAC25-840-90. Review and evaluation of VESCPs: minimum program standards.

A. This section sets forth the criteria that will be used by the department to determine whether a VESCP operating under authority of the Act, satisfies minimum standards of effectiveness, as follows.

Each VESCP must contain an ordinance or other appropriate document or documents adopted by the VESCP authority. Such document or documents must be consistent with the Act and this chapter, including the following criteria:

1. The document or documents shall include or reference the definition of land-disturbing activity including exemptions, as well as any other significant terms, as necessary to produce an effective VESCP.

2. The document or documents shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the Act and this chapter, and must include the requirements and design standards to be used in the program.

3. The document or documents shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for

conducting inspections shall be identified. The VESCP authority shall maintain, either on-site or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity.

4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

B. The department shall periodically conduct a comprehensive review and evaluation of local programs. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a local program shall consist of the following: (i) consultation with the local program administrator or designee or designees; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the program; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial program compliance review.

C. Local programs shall be reviewed and evaluated for effectiveness in carrying out the Act and this chapter using the criteria in this section.

D. If deficiencies noted in the review will cause the erosion and sediment control program to be inconsistent with the state program and this chapter, the ~~board~~ department shall provide the VESCP authority with a copy of its decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the ~~board~~ department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the ~~board~~ department shall have the authority to (i) issue a special order to any VESCP imposing a civil penalty set out in § 62.1-44.15:54 F of the Act or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the ~~board~~ department and the judicial review thereof. In lieu of issuing a special order or revoking the program, the ~~board~~ department is authorized to take legal action against a VESCP to ensure compliance.

E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by the department.

9VAC25-840-100. State agency projects.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the department as being consistent with the Act and this chapter, or an erosion and sediment control plan has been submitted to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the Act and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The ~~board or the~~ department may also pursue enforcement as provided by § 62.1-44.15:63 of the Act.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

9VAC25-840-110. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7253; Filed September 9, 2022, 2:34 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-850. Erosion and Sediment Control and Stormwater Management Certification Regulations (amending 9VAC25-850-10, 9VAC25-850-30 through 9VAC25-850-55, 9VAC25-850-70, 9VAC25-850-80, 9VAC25-850-90; repealing 9VAC25-850-100).**

Statutory Authority: § 62.1-44.15:52 of the Code of Virginia.

Effective Date: November 9, 2022.

Agency Contact: Kevin Vaughan, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4470, email kevin.vaughan@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-850-10. Definitions.

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

"Applicant" means any person submitting a request to be considered for certification.

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

"Certification" means the process whereby the ~~board~~ department, on behalf of the Commonwealth, issues a certificate to persons who have completed ~~board~~ department-approved training programs and met any additional eligibility requirements of 9VAC25-850-50 related to the specified classifications (9VAC25-850-40) within the areas of ESC or SWM or in other ways demonstrated adequate knowledge and experience in accordance with the eligibility requirements of 9VAC25-850-50 in the specified classifications within the areas of ESC or SWM.

"Certified combined administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the ~~board~~ department in the combined ESC classifications of program administrator, plan reviewer, and project inspector in the area of ESC.

"Certified combined administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the ~~board~~ department in the combined classifications of program administrator, plan reviewer, and project inspector in the area of SWM.

"Certified plan reviewer for ESC" means an employee or agent of a VESCP authority who: (i) holds a certificate of competence from the ~~board~~ department in the classification of plan reviewer in the area of ESC; (ii) is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia; or (iii) is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

"Certified plan reviewer for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the ~~board~~ department in the classification of plan reviewer in the area of SWM.

"Certified program administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the ~~board~~ department in the classification of program administrator in the area of ESC.

"Certified program administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the ~~board~~ department in the classification of program administrator in the area of SWM.

"Certified project inspector for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the ~~board~~ department in the classification of project inspector in the area of ESC.

"Certified project inspector for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the ~~board~~ department in the classification of project inspector in the area of SWM.

"Classification" means the four specific certificate of competence classifications within the areas of ESC or SWM that make up activities being performed (program administrator, plan reviewer, project inspector, and combined administrator).

"Combined administrator for ESC" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VESCP authority.

"Combined administrator for SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VSMP authority.

"Department" means the Department of Environmental Quality.

"Erosion and sediment control plan" or "ESC plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of all decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objective.

"ESC" means erosion and sediment control.

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

"Plan reviewer" means anyone who is responsible for determining the accuracy of ESC plans and supporting documents or SWM plans and supporting documents for approval by a VESCP authority or a VSMP authority as may be applicable in the areas of ESC or SWM.

"Program administrator" means the person or persons responsible for administering and enforcing the VESCP or VSMP of a VESCP authority or a VSMP authority as may be applicable in the areas of ESC or SWM.

"Project inspector" means anyone who, as a representative of a VESCP authority or a VSMP authority, is responsible for periodically examining the ESC or SWM activities and premises of a land-disturbing activity for compliance with the ESC Act and Regulations or the SWM Act and Regulations as may be applicable.

"Responsible land disturber" or "RLD" means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.

"Stormwater management plan" or "SWM plan" means a document containing material describing methods for complying with the requirements of a VSMP and the SWM Act and its attendant regulations.

"SWM" means stormwater management.

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

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

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

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

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the ~~board~~ department after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the department. An authority may include a locality; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

9VAC25-850-30. Applicability.

This chapter is applicable to:

1. Every VESCP authority or VSMP authority that administers a VESCP or VSMP as may be applicable. Staff of a VESCP authority must be certified in accordance with §§ 62.1-44.15:51 E and 62.1-44.15:53 of the ESC Act. Staff of a VSMP authority must be certified in accordance with § 62.1-44.15:30 of the SWM Act.

2. Anyone who is contracted by a VESCP authority or a VSMP authority to perform any or all of the functions of that

authority as may be applicable. This person will be subject to the same certification requirements as the authority.

3. Anyone voluntarily seeking certificates of competence from the ~~board~~ department for classifications described in 9VAC25-850-40.

9VAC25-850-40. Certificates.

A. Certificates of competence shall be issued by the ~~board~~ department in accordance with the requirements of 9VAC25-850-50 for the following classifications:

1. Program administrator for ESC. The person employed as the VESCP administrator.

2. Plan reviewer for ESC. The person who reviews ESC plans to be approved by the VESCP authority.

3. Project inspector for ESC. The person responsible for inspecting erosion and sediment control practices to ensure compliance with the Virginia Erosion and Sediment Control Law and Regulations.

4. Combined administrator for ESC. The person responsible for performing the combined duties of program administrator, plan reviewer and project inspector for a VESCP authority.

5. Program administrator for SWM. The person employed as the VSMP administrator.

6. Plan reviewer for SWM. The person who reviews SWM plans to be approved by the VSMP authority.

7. Project inspector for SWM. The person responsible for inspecting regulated activities to ensure compliance with the SWM Act and Regulations.

8. Combined administrator for SWM. The person responsible for performing the combined duties of program administrator, plan reviewer, and project inspector for a VSMP authority.

B. A certificate shall be issued by the ~~board~~ department for the responsible land disturber or RLD for ESC. The RLD is the person responsible for carrying out the land-disturbing activity.

C. Any person employed as a plan reviewer who is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or as a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for ESC and will not require a certificate of competence from the ~~board~~ department. In lieu of a person holding this ~~board~~ department certificate of competence, such person shall produce a current professional license or certification upon request of the department.

D. Any person who holds a valid and unexpired certificate of competence issued by the ~~board~~ department in the classification of ESC or SWM, or who obtains such a certificate, and who later successfully obtains an additional certificate of competence from the ~~board~~ department in the parallel ESC or SWM classification may surrender both certificates of competence to the ~~board~~ department and request in writing issuance of a dual certificate showing certification in both classifications. Such a request must be made while both of the ESC and SWM certificates of competence obtained are valid and unexpired. The expiration date of the dual certificate shall be three years from the date of expiration of the additional certificate acquired.

9VAC25-850-50. Eligibility requirements.

A. Certification may be obtained by satisfactorily completing and submitting an application to the department in accordance with 9VAC25-850-80 and:

1. By obtaining a total of 800 hours of experience as an ESC or SWM plan reviewer, project inspector, or combined administrator and obtaining a passing score on the certification examination administered by the department in the applicable ESC or SWM area; or

2. By enrolling in and completing, within 12 months, a ~~board~~ department-approved training program in the classifications of program administrator, plan reviewer, project inspector, or combined administrator and obtaining within one year of completion of the training program a passing score on the certification examination administered by the department in the applicable ESC or SWM area.

a. The training program for project inspectors for ESC will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Inspectors."

b. The training program for plan reviewers for ESC will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Plan Reviewers."

c. The training program for program administrators for ESC will consist of attending the course "Basic Erosion and Sediment Control in Virginia."

d. The training program for combined administrators for ESC will consist of attending the courses/seminars "Basic Erosion and Sediment Control in Virginia," "Erosion and Sediment Control for Inspectors," and "Erosion and Sediment Control for Plan Reviewers."

e. The training program for project inspectors for SWM will consist of attending and completing courses/seminars in "Basic Stormwater Management in Virginia" and "Stormwater Management for Inspectors."

f. The training program for plan reviewers for SWM will consist of attending and completing courses/seminars in "Basic Stormwater Management in Virginia" and "Stormwater Management for Plan Reviewers."

g. The training program for program administrators for SWM will consist of attending the seminar "Basic Stormwater Management in Virginia."

h. The training program for combined administrators for SWM will consist of attending the courses/seminars "Basic Stormwater Management in Virginia," "Stormwater Management for Inspectors," and "Stormwater Management for Plan Reviewers."

3. By enrolling in and completing the training program and obtaining a passing score on the certification examination administered by the department for responsible land disturbers for ESC.

B. Certification and recertification shall be valid for three years and will expire on the last day of the expiration month except as otherwise set out in 9VAC25-850-40 D or 9VAC25-850-90.

C. Recertification may be obtained for classifications outlined in 9VAC25-850-40 of this chapter prior to the expiration date of a certification by:

1. Obtaining a passing score on the recertification examination;

2. Successfully completing a ~~board~~ department-approved training program during the last 12 months of the term of the certificate but prior to its expiration date;

3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1, and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for classifications in subdivisions A 1 through 4 and subsection B of 9VAC25-850-40. However, such professionals when in the classification of plan reviewer for ESC shall be exempt from the recertification requirements and fees of this chapter provided they maintain their professional license;

4. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for classifications in subdivisions A 5 through 8 and subsection B of 9VAC25-850-40; or

5. Completing continuing professional education hours in accordance with department guidance.

9VAC25-850-55. Classification ~~acknowledgement~~ acknowledgment for the purposes of program compliance reviews.

For the purposes of VESCP or VSMP compliance reviews and evaluations, the certification requirements of §§ 62.1-44.15:53 and 62.1-44.15:30 of the Code of Virginia shall be deemed to have been met if the VESCP or the VSMP authority has a person or persons enrolled in the ~~board's~~ department's ESC or SWM training programs set forth in 9VAC25-850-50 A 1 and A 2 a through h for the necessary classifications and such person or persons obtains certification within one year of completing the necessary training programs.

9VAC25-850-70. Examination.

A. A ~~board~~ department-approved examination shall be administered at least twice a year.

B. An individual may take the certification examination for the desired certificate of competence after fulfilling the prerequisite experience requirement or completing a ~~board~~ department-approved training program in accordance with 9VAC25-850-50.

C. An individual who is unable to take an examination at the time scheduled shall notify the department within 48 hours prior to the date of the examination unless a later time is established by the department; such an individual may be rescheduled for the next examination. Failure to notify the department may require an individual to submit a new application and payment of fees in accordance with this chapter.

D. An applicant who is unsuccessful in passing an examination will be allowed to pay the appropriate fee and retake the appropriate exam within one year without resubmitting an application. After the one-year period has elapsed, an applicant will be required to submit a new application with the appropriate fee in accordance with this chapter in order to take the examination. Application for examination must be received at least 60 days prior to the scheduled examination unless a later date is established by the department to be eligible to sit for the examination.

E. A minimum passing score of 70% will be required on the appropriate certification exam(s).

F. All applicants will be notified within 60 days of the results of the examination.

9VAC25-850-80. Application.

A. Any person seeking certification or recertification by a combination of experience and examination or by the combination of completion of the training program and examination shall submit a completed application in a manner prescribed by the department with the appropriate fee(s). The application shall contain the following:

1. The applicant's name, address, daytime phone number, email address, and name and address of business or organization as well as the date the application was filled out.

2. The classification of certification the applicant is applying for as set forth in 9VAC25-850-40, and designation whether

the applicant is applying for initial certification or recertification.

3. If any special arrangements must be provided for because of a handicap.

4. A verification of all work experience signed and dated by applicant's supervisor, if required.

5. A signed statement that the information provided in the application is true and accurate.

Incomplete applications will be returned to the applicant. All applications must be received by the department at least 60 days prior to the scheduled examination date, unless a later date is established by the department, in order to be able to sit for the examination.

The department may establish other acceptable forms of documentation for the components of the application that provide similar assurances as those set forth in this subsection.

B. All complete applications of candidates will be reviewed by the department to determine eligibility for certification. All applicants will be notified of the results of the review. Any applicant may appeal the review, in writing, to the ~~board~~ department within 30 days of the department's determination. No applicant will be approved for certification unless he meets the requirements of this chapter.

C. Applicants who have been found ineligible to sit for an examination may request further consideration by submitting a letter to the ~~board~~ department with the necessary evidence of additional qualifications. No additional fee will be required provided that all requirements for certification are met within one year from the date of original application.

9VAC25-850-90. Discipline of certified personnel.

The ~~board~~ department may suspend, revoke or refuse to grant or renew the certification of any person if the ~~board~~ department, in an informal fact finding under § 2.2-4019 of the Code of Virginia, finds that:

1. The certification was obtained or renewed thorough fraud or misinterpretation;

2. The certified person has violated or cooperated with others in violating any provision of this chapter;

3. The certified person has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of his duties; or

4. The certified person has made any material misrepresentation in the course of performing his duties.

9VAC25-850-100. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7254; Filed September 9, 2022, 2:35 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-860. Virginia Pollutant Discharge Elimination System General Permit for Potable Water Treatment Plants (amending 9VAC25-860-10; repealing 9VAC25-860-30).**

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

Effective Date: November 9, 2022.

Agency Contact: Elleanore Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, FAX (804) 698-4178, or email elleanore.daub@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-860-10. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9VAC25-31, the VPDES Permit Regulation, unless the context clearly indicates otherwise, except that for the purposes of this chapter:

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

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

"Membrane treatment" means a pressure driven process using synthetic materials to separate constituents from water. Membranes are used for dissolved solids or suspended solids removal. Membrane treatment for dissolved solids removal includes reverse osmosis and nanofiltration. Membrane treatment for suspended solids removal includes ultrafiltration and microfiltration.

"Microfiltration" means a method of membrane treatment designed to remove particles down to 0.1 µm in size. The

treatment removes cysts, bacteria, and most (but not all) particulates.

"Nanofiltration" or "low-pressure reverse osmosis" or "membrane softening" means a method of membrane treatment designed to remove multivalent ions (softening) and removes contaminants down to 1 nm (nanometer = 0.001 µm) in size.

"Potable water treatment plant" means an establishment engaged in producing water for domestic, commercial, or industrial use as designated by North American Industry Classification System (NAICS) Code 221310 - Water Supply and Irrigation Systems, (Executive Office of the President, Office of Management and Budget, United States, 2017), Standard Industrial Classified (SIC) Code 4941 - Water Supply (Office of Management and Budget (OMB) SIC Manual, 1987), or others as approved by the board.

"Reverse osmosis" means a method of membrane treatment designed to remove salts and low-molecular weight solutes and remove all contaminants down to 0.0001 µm (microns) in size. Reverse osmosis methods apply pressure in excess of osmotic pressure to force water through a semi-permeable membrane from a region of high salt concentration to a region of lower salt concentration.

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

"Ultrafiltration" means a method of membrane treatment designed to remove particles down to 0.01 µm in size. The treatment removes cysts, bacteria, and viruses as well as suspended solids.

9VAC25-860-30. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7278; Filed September 9, 2022, 2:35 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-1; repealing 9VAC25-880-100).**

Statutory Authority: § 62.1-44.15:24 of the Code of Virginia

Effective Date: November 9, 2022.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-880-1. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), this chapter, and 9VAC25-870 unless the context clearly indicates otherwise, except as otherwise specified in this section. Terms not defined in the Act, this chapter, or 9VAC25-870 shall have the meaning attributed to them in the federal Clean Water Act (33 USC § 1251 et seq.) (CWA). For the purposes of this chapter:

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

"Business day" means Monday through Friday excluding state holidays.

"Commencement of land disturbance" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Construction site" means the land where any land-disturbing activity is physically located or conducted, including any adjacent land used or preserved in connection with the land-disturbing activity.

"Department" means the Department of Environmental Quality.

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform

(e.g., evenly distributed), mature enough to survive, and will inhibit erosion.

2. For individual lots in residential construction, final stabilization can occur by either:

a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or

b. The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and providing written notification to the homeowner of the need for, and benefits of, final stabilization. The homebuilder shall maintain a copy of the written notification and a signed statement certifying that the information was provided to the homeowner in accordance with the stormwater pollution prevention plan recordkeeping requirements as specified in Part II G 6.

3. For construction projects on land used for agricultural purposes, final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use shall meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"Immediately" means as soon as practicable, but no later than the end of the next business day, following the day when the land-disturbing activities have temporarily or permanently ceased. In the context of this general permit, "immediately" is used to define the deadline for initiating stabilization measures.

"Impaired waters" means surface waters identified as impaired on the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report.

"Infeasible" means not technologically possible or not economically practicable and achievable in light of best industry practices.

"Initiation of stabilization activities" means:

1. Prepping the soil for vegetative or nonvegetative stabilization;

2. Applying mulch or other nonvegetative product to the exposed area;

3. Seeding or planting the exposed area;

4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or

5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list is not exhaustive.

"Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over 24 hours.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

9VAC25-880-100. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7280; Filed September 9, 2022, 2:35 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-890. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (amending 9VAC25-890-1, 9VAC25-890-10).**

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

Effective Date: November 9, 2022.

Agency Contact: Derick Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2654, FAX (804) 698-4178, or email derick.winn@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-890-1. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia) and 9VAC25-870 unless the context clearly indicates otherwise, except that for the purposes of this chapter:

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

"Date brought online" means the date when the permittee determines that a new stormwater management facility is properly functioning.

"Department" means the Department of Environmental Quality.

"High-priority facilities" means facilities owned or operated by the permittee that actively engage in one or more of the following activities: (i) composting, (ii) equipment storage and maintenance, (iii) materials storage, (iv) pesticide storage, (v) storage for public works, (vi) recycling, (vii) salt storage , (viii) solid waste handling and transfer, and (ix) vehicle storage and maintenance.

"MS4 regulated service area" or "service area" means for Phase II permittees, the drainage area served by the permittee's MS4 that is located within an urbanized area as determined by the 2010 decennial census performed by the Bureau of the Census. MS4 regulated service area may also be referred to as "served by the MS4" as it pertains to the tables in Part II A of this permit.

"Physically interconnected" means that one MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the second system.

"Pollutants of concern" or "POC" means pollutants specifically identified in a U.S. Environmental Protection Agency approved total maximum daily load (TMDL) report as causing a water quality impairment.

9VAC25-890-10. Purpose; ~~delegation of authority;~~ effective date of the state permit.

A. This general permit regulation governs point source stormwater discharges from regulated small municipal separate storm sewer systems (small MS4s) to surface waters of the Commonwealth of Virginia. Nonmunicipal stormwater or wastewater discharges are not authorized by this permit except in accordance with 9VAC25-890-20 D.

B. This general permit will become effective on November 1, 2018 and will expire October 31, 2023.

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

VA.R. Doc. No. R23-7281; Filed September 9, 2022, 2:35 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-920. General Permit for the Use of Irrigation Withdrawals from the Surficial Aquifer Greater Than 300,000 Gallons in any One Month (adding 9VAC25-920-10 through 9VAC25-920-100).**

Statutory Authority: §§ 62.1-256, 62.1-258.1, and 62.1-266 of the Code of Virginia.

Effective Date: November 9, 2022.

Agency Contact: Joseph Grist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4031, or email joseph.grist@deq.virginia.gov.

Summary:

The regulatory action establishes a new general permit promoting the use of the surficial aquifer system for nonagricultural withdrawal in any groundwater management area and includes (i) permit terms, (ii) withdrawal limits, (iii) reporting requirements, and (iv) criteria for determining adequate quality and quantity from the surficial aquifer necessary to permit withdrawals. The intent of this new regulation is to conserve groundwater in the confined aquifer system within the groundwater management areas for potable needs.

Changes to the proposed regulation conform the new regulation to Chapter 356 of the 2022 Acts of Assembly, which transfers board authority to issue permits and orders to the Department of Environmental Quality.

Chapter 920

General Permit for the Use of Irrigation Withdrawals from the Surficial Aquifer Greater Than 300,000 Gallons in any One Month

9VAC25-920-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in § 62.1-254 et seq. of the Code of Virginia (Ground Water Management Act of 1992) and 9VAC25-610 (Groundwater Withdrawal Regulation), except that for the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons that have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural irrigation" means irrigation that is used to support any operation devoted to bona fide production of crops, animals, or fowls, including the production of fruits and vegetables of any kinds; meat, dairy, and poultry products; nuts, tobacco, and floral products; and the production and harvest of products from silvicultural activity.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes domestic, including public water supply; agricultural; commercial; and industrial uses.

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

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

"Eastern Shore Groundwater Management Area" means the groundwater management area declared by the board encompassing the Counties of Accomack and Northampton.

"Eastern Virginia Groundwater Management Area" means the groundwater management area declared by the board encompassing the Counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and Stafford Counties east of Interstate 95; and the Cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"Groundwater management area" means a geographically defined groundwater area in which the board has deemed the levels, supply, or quality of groundwater to be adverse to public welfare, health, and safety.

"Irrigation" means the controlled application through man-made systems to supply water requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit, or coverage under a general permit, issued under the Ground Water Act of 1992.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Virginia Drought Evaluation Regions" means those drought evaluation regions encompassing the Counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and Stafford Counties east of Interstate 95; and the Cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

9VAC25-920-20. Information requirements.

Pursuant to 9VAC25-610-380, the [~~board~~ department] may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's groundwater withdrawal; and (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a

general permit coverage shall provide the information requested by the [~~board~~ department].

9VAC25-920-30. Purpose.

The purpose of this chapter is to establish a general permit for the use of irrigation water withdrawals from the surficial aquifer greater than 300,000 gallons in any one month under the provisions of 9VAC25-610. Applications for coverage under this general permit shall be processed for approval or denial by the [~~board~~ department]. Coverage or application denial by the [~~board~~ department] shall constitute the general permit action and shall follow all provisions in the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each general permit action is exempt.

9VAC25-920-40. [~~Delegation of authority~~ Reserved].

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

9VAC25-920-50. Effective date of the permit.

The general permit in 9VAC25-920-90 becomes effective on [~~(insert the effective date of the regulation)~~ November 9, 2022,] and expires on [~~(insert the date 15 years after effective date of the regulation)~~ November 9, 2037]. Any coverage that is granted pursuant to 9VAC25-920-90 shall remain in full force and effect until 11:59 p.m. on [~~(insert the date 15 years after effective date of the regulation)~~ November 9, 2037,] unless the general permit coverage is terminated or revoked on or before that date.

9VAC25-920-60. Authorization to withdrawal groundwater from the surficial aquifer of a groundwater management area.

A. A person granted coverage under this general permit may withdraw groundwater from the surficial aquifer of the Eastern Shore Groundwater Management Area or the Eastern Virginia Groundwater Management Area, as defined in this chapter, provided that:

1. The applicant submits an application in accordance with 9VAC25-920-90;

2. The applicant remits any required permit application fee;

3. The applicant receives general permit coverage from the Department of Environmental Quality under 9VAC25-920-100 and complies with the limitations and other requirements of the general permit, the general permit coverage letter, and the Ground Water Management Act of 1992 and attendant regulations; and

4. The applicant has not been required to obtain an individual permit under 9VAC25-610 for the proposed project withdrawals. Any applicant that is eligible for general permit coverage may, at the applicant's discretion, seek an individual permit instead of coverage under this general permit.

B. Application may be made at any time for an individual permit in accordance with 9VAC25-610.

C. Coverage under this general permit does not relieve the permittee of the responsibility to comply with other applicable federal, state, or local statutes, ordinances, or regulations.

D. The activity to withdraw water shall not have been prohibited by state law or regulations, nor shall it contravene applicable Groundwater Withdrawal Regulations (9VAC25-610).

E. Coverage under this general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-610-50.

9VAC25-920-70. Reasons to deny coverage.

A. The [~~board~~ department] shall deny application for coverage under this general permit to:

1. An activity outside a groundwater management area.

2. An activity in an aquifer other than the surficial aquifer of a groundwater management area.

3. An activity that causes, may reasonably be expected to cause, or may contribute to causing more than minimal water level declines in the underlying confined aquifer system or degradation in water quality, stream or wetland hydrology, or other instream beneficial uses.

B. The [~~board~~ department] may require an individual permit in accordance with 9VAC25-610-95 B rather than granting coverage under this general permit.

9VAC25-920-80. Exclusions.

A. It shall be unlawful on or after [~~(insert the effective date of the regulation)~~ November 9, 2022,] for any person to construct a well for nonagricultural irrigation withdrawal purposes greater than 300,000 gallons in any one month in a groundwater management area except in the surficial aquifer, unless the Department of Environmental Quality has determined the quantity or quality of the groundwater in the surficial aquifer, as provided in subsection B of this section, is not adequate to supply the proposed beneficial use.

B. Any person may construct a well for nonagricultural irrigation purposes in a groundwater management area outside of the surficial aquifer if any of the following criteria for the proposed location for surficial water withdrawal are documented to the satisfaction of the department:

1. That a ratio of greater than one surficial well per acre would be required to support the proposed beneficial use water withdrawal volume based on the yield test results from at a minimum of two surficial aquifer test wells, separated by a minimum of 500 feet, unless the Department of

Environmental Quality has determined that the separation distance between test wells can be less than 500 feet;

2. That any two surficial aquifer water quality sample tests, analysis, measurements, or monitoring results at the proposed or existing water withdrawal site conducted by a laboratory certified by the Environmental Laboratory Certification Program (§ 2.2-1105 of the Code of Virginia), Certification for Noncommercial Environmental Laboratories (1VAC30-45), or Accreditation for Commercial Environmental Laboratories (1VAC30-46) and collected at least 30 days but no more than 60 days apart, exceeds any of the water quality values as follows:

a. Bicarbonate levels greater than 120 mg/l;

b. Chloride (Cl) levels greater than 70 mg/l;

c. Sodium (Na) levels greater than 70 mg/l;

d. Manganese (Mn) levels greater than 0.2 mg/l;

e. Iron (Fe) levels greater than 5 mg/l; or

f. Electric conductivity greater than 1.5 ds/m.

C. Any person who satisfies the criteria in subsection B of this section may construct a well for nonagricultural irrigation purposes outside of the surficial aquifer but shall be required to apply for an individual permit in accordance with 9VAC25-610-95 B prior for the purposes of withdrawing 300,000 gallons or more of groundwater in any month rather than obtaining coverage under this general permit.

9VAC25-920-90. Application.

A. The applicant shall file a complete application in accordance with this section for coverage under this general permit for use of the surficial aquifer in a groundwater management area.

B. A complete application for general permit coverage, at a minimum, consists of the following information:

1. The permit fee as required by the Fees for Permits and Certificates (9VAC25-20).

2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the [~~board~~ department]. The application forms are available from the [~~Department of Environmental Quality~~ department].

3. A signature as described in 9VAC25-610-150.

4. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;

5. For all proposed wells, the well name, proposed well depth, screen intervals, pumping rate, and latitude and longitude.

6. Locations of all existing and proposed wells associated with the application shown on a USGS 7.5 minute topographic map or equivalent computer generated map. The map shall be of sufficient detail such that all wells may be easily located for site inspection. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The map must show the outline of the property and the location of each of its existing and proposed wells and must include all springs, rivers, and other surface water bodies.

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable.

8. Notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 calendar days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery.

9. Documentation justifying the volume of groundwater withdrawal requested as described in the groundwater withdrawal application provided in accordance with 9VAC25-920-90 B 2.

10. The department shall require a complete suite of geophysical logs (16"/64" Normal, Single Point, Self Potential, Lateral, and Natural Gamma at a scale of 20 feet per inch), as follows:

a. The geophysical logs shall be obtained from boreholes at the locations and depths approved by the department;

b. At least four months prior to the scheduled geophysical logging, the applicant shall notify the department of the drilling timetable to receive further guidance needed on performing the geophysical logging and to allow scheduling of department staff to make a site visit during the drilling of the borehole and the geophysical logging; and

c. Geophysical log data collected without the oversight of the department will not be accepted by the department.

11. In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following

features and implementation of the mitigation plan shall be included as enforceable permit conditions:

a. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

b. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

c. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

d. The requirement that the claimant provide documentation that the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

C. The [~~board~~ department] may waive the requirement for information listed in subsection B of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

D. If an application is not accepted as complete by the [~~board~~ department] under the requirements of subsection B of this section, the [~~board~~ department] will require the submission of additional information pursuant to 9VAC25-610-98.

E. An incomplete permit application for coverage under this general permit may be administratively withdrawn from processing by the [~~board~~ department] for failure to provide the required information after 60 calendar days from the date of the latest written information request made by the [~~board~~ department]. An applicant may request a suspension of application review by the [~~board~~ department]. A submission by the applicant making such a request shall not preclude the [~~board~~ department] from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project after the time that the original permit application was administratively withdrawn shall require submittal of an additional permit application fee.

9VAC25-920-100. General permit.

An owner whose application is accepted by the [~~board~~ department] will receive coverage under the following permit and shall comply with the requirements in the permit and be subject to all requirements of 9VAC25-610 and the Ground Water Management Act of 1992.

Effective date: [~~(insert the effective date of the regulation)~~ November 9, 2022].

Expiration date: [~~(insert the date 15 years after the effective date of the regulation)~~ November 9, 2037].

GENERAL PERMIT FOR THE USE OF IRRIGATION WITHDRAWALS FROM THE SURFICIAL AQUIFER GREATER THAN 300,000 GALLONS IN ANY ONE MONTH

Pursuant to § 62.1-256 of the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) and Groundwater Withdrawal Regulations (9VAC25-610), the State Water Control Board hereby authorizes the permittee to withdraw and use groundwater in accordance with this permit.

The authorized withdrawals shall be in accordance with the information submitted with the application, this cover page, Part I – Operating Conditions, and Part II – Conditions Applicable to All Groundwater Withdrawal Permits, as set forth in this general permit.

Part I.
Operating Conditions.

A. Authorized withdrawal. The withdrawal of groundwater shall be limited to the wells identified in the groundwater withdrawal application submitted in accordance with 9VAC25-920-90.

B. Reporting.

1. Water withdrawn from each well shall be recorded monthly at the end of each month, and reported to the department annually, in paper or electronic format, on a form provided by the department, by July 10 for the respective previous 12 months. Records of water use shall be maintained by the Permittee in accordance with Part II F 1 through F 4 of this general permit.

2. The permittee shall report any amount in excess of the permitted withdrawal limit by the fifth day of the month following the month when such a withdrawal occurred. Failure to report may result in compliance or enforcement activities.

C. Water conservation and management plan.

1. The permittee shall conduct an annual water audit quantifying the flows of the water in the system to understand its usage, reduce losses, and improve water conservation. The audit shall include:

a. Documentation of an annual review of the amount of water used compared with the expected need of the system to ensure that the water system uses the minimum amount of water necessary;

b. A list of any new water saving equipment, procedures, or improvements installed or water saving processes implemented during the previous year;

c. Documentation of implementation and evaluation of a leak detection and repair process, including documented quarterly visual monitoring during withdrawal periods where the permittee will locate and correct system leaks; and

d. A Groundwater Withdrawal Water Conservation and Management Audit Form, completed in its entirety, provided by the department.

2. Results of the annual audit shall be maintained onsite and available to the department upon request.

3. When a drought emergency is declared by the Commonwealth of Virginia in the permittee's Virginia Drought Evaluation Region or in accordance with a county or locality drought management ordinance, the permittee shall implement either the provisions directed by the Commonwealth or the drought management ordinance, whichever is the most restrictive. The permittee shall be responsible for determining when drought emergencies are declared. The permittee shall retain records documenting that mandatory conservation measures were implemented during declared drought emergencies.

D. Mitigation plan. In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

1. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

2. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

3. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

4. The requirement that the claimant provide documentation that the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

E. Property rights. The issuance of coverage under this general permit does not convey property rights in either real or personal property or exclusive privileges, nor does it authorize injury to private property, an invasion of personal property rights, or an infringement of federal, state, or local laws or regulations. The fact that an owner obtains coverage under this general permit shall not constitute a defense in a civil action involving private rights.

F. Well tags. Each well that is included in the coverage under this general permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records, at a minimum, the DEQ well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well. Such well identification plates shall be in a format specified by the [~~board~~ department] and are available from the department.

G. Well abandonment. The permittee shall permanently abandon out-of-service wells in accordance with the Virginia Department of Health regulations and shall submit documentation to the Department of Environmental Quality within 30 calendar days of abandonment. At least two weeks prior to the scheduled abandonment, the permittee shall notify the department of the scheduled abandonment date.

Part II.
Conditions Applicable to All Groundwater Withdrawal Permits.

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permit holder of the duty to comply with all applicable federal and state statutes, regulations, and prohibitions. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to avoid all adverse impacts that may result from this withdrawal as defined in 9VAC25-610-10 and to provide mitigation of the adverse impact in accordance with Part I D of this general permit.

D. Inspection, entry, and information requests. Upon presentation of credentials, the permittee shall allow the [~~board~~ department], or any duly authorized agent of the [~~board~~ department] at reasonable times and under reasonable circumstances (i) to enter upon the permittee's property, public or private; (ii) to have access to, inspect, and copy any records

that must be kept as part of the permit conditions; and (iii) to inspect any facilities, well, water supply system, operations, or practices, including sampling, monitoring and withdrawal, that are regulated or required under the permit. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained in this general permit shall make an inspection time unreasonable during an emergency.

E. Duty to provide information. The permittee shall furnish to the [~~board or~~] department, within a reasonable time, information that the [~~board~~ department] may request to determine whether cause exists for modifying, revoking, reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the [~~board or~~] department, upon request, copies of records required to be kept by regulation or this permit.

F. Water withdrawal volume records requirements.

1. The permittee shall maintain a copy of the permit on-site and shall make the permit available upon request.

2. Measurements taken for the purpose of monitoring shall be representative of the metered activity.

3. The permittee shall retain records of all metering information, including (i) all calibration and maintenance records, (ii) copies of all reports required by the permit, and (iii) records of all data used to complete the application for the permit for a period of at least three years from the date of the expiration of coverage under this general permit. This period may be extended by request of the [~~board~~ department] at any time.

4. Records of metering information shall include, as appropriate:

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

b. The names of the individuals who performed measurements;

c. The date the measurements were performed; and

d. The results of the measurements.

G. Water withdrawal volume metering and equipment requirements. Each well and impoundment or impoundment system shall have an in-line totalizing flow meter to read gallons, cubic feet, or cubic meters installed prior to beginning the permitted use. Meters shall produce volume determinations within plus or minus 10% of actual flows.

1. A defective meter or other device shall be repaired or replaced within 30 business days of discovery.

2. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals. The period during which the meter was defective must be clearly identified in the groundwater withdrawal report required by Part I B of this permit. An alternative method for determining flow may be approved by the [~~board~~ department] on a case-by-case basis.

H. Well construction. At least four months prior to the scheduled construction of any well, the permittee shall notify the department of the construction timetable and shall receive prior approval of the well location and acquire the DEQ well number. All wells shall be constructed in accordance with the following requirements.

1. A well site approval letter or well construction permit shall be obtained from the Virginia Department of Health prior to construction of the well.

2. For wells the Department of Environmental Quality estimates shall be within 20 feet below land surface of an aquifer top confining layer a complete suite of geophysical logs (16"/64" Normal, Single Point, Self-Potential, Lateral, and Natural Gamma) shall be completed for the well and submitted to the department along with the corresponding completion report as required by 9VAC25-920-90 B 10.

3. The permittee's determination of the surficial aquifer depth shall be submitted to the department for review and approval, or approved on site by the department's geologist, prior to installation of any pump.

4. A completed Uniform Water Well Completion Report, Form GW-2 and any additional water well construction documents shall be submitted to the department within 30 calendar days of the completion of any well and prior to the initiation of any withdrawal from the well. The assigned DEQ well number shall be included on all well documents.

I. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

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

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~~ department] does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II I 2 b of this permit.

J. Notice of planned change. The permittee shall give notice to the department at least 30 business days prior to any planned

alterations or additions to the permitted water withdrawal system.

K. Revocation and termination of coverage.

1. General permit coverage may be revoked in accordance with 9VAC25-610-290 and 9VAC25-610-300.

2. The permittee may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

a. Operations have ceased at the facility and there are no longer withdrawals from the surficial aquifer.

b. A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a Change of Ownership Agreement Form has been submitted.

c. All groundwater withdrawals associated have been covered by an individual groundwater withdrawal permit.

d. Termination of coverage is being requested for another reason, provided the [~~board~~ department] agrees that coverage under this general permit is no longer needed.

3. The notice of termination shall contain the following information:

a. The owner's name, mailing address, telephone number, and email address, if available;

b. The facility name and location;

c. The general permit number;

d. A completed Termination Agreement Form obtained from the department; and

e. The basis for submitting the notice of termination, including:

(1) A statement indicating that a new owner has assumed responsibility for the facility;

(2) A statement indicating that operations have ceased at the facility, and there are no longer groundwater withdrawals from the surficial aquifer;

(3) A statement indicating that all groundwater withdrawals have been covered by an individual Groundwater Withdrawal permit; or

(4) A statement indicating that termination of coverage is being requested for another reason (state the reason); and

(5) The following certification: "I certify under penalty of law that all groundwater withdrawals from the surficial aquifer at the identified facility that are authorized by this general permit have been eliminated, or covered under a groundwater withdrawal individual permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to withdraw groundwater in accordance with the general permit, and that withdrawing groundwater is unlawful where the withdrawal is not authorized by a groundwater withdrawal permit or otherwise excluded from permitting. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Virginia Groundwater Management Act."

4. The notice of termination shall be signed in accordance with 9VAC25-610-150.

L. Continuation of coverage. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete application at least 90 calendar days prior to the expiration date of the permit, or a later submittal established by the [~~board~~ department], which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to withdraw until such time as the [~~board~~ department] either:

1. Issues coverage to the owner under this general permit; or

2. Notifies the owner that the withdrawal is not eligible for coverage under this general permit.

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 coverage under a new permit. All permittees with currently effective permit coverage shall submit a new application at least 90 calendar days before the expiration date of the existing permit, unless permission for a later date has been granted in writing by the [~~board~~ department]. The [~~board~~ department] shall not grant permission for application to be submitted later than the expiration date of the existing permit.

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 (9VAC25-920)

Application for a General Permit for the Use of Irrigation Withdrawals from the Surficial Aquifer Greater Than 300,000 Gallons in Any One Month, GWP-SAGP-Application (eff. 12/2021)

General Permit For The Use Of Irrigation Withdrawals From the Surficial Aquifer Greater Than 300,000 Gallons in Any One Month Groundwater Withdrawal Water Conservation and Management Audit Form, GWP-SAGP-WCMP (eff. 12/2021)

General Permit For The Use Of Irrigation Withdrawals From The Surficial Aquifer Greater Than300,000 Gallons In Any One Month Annual Groundwater Withdrawal Report, GWP-SAGP-Reporting (eff. 12/2021)

Groundwater Withdrawal Permit Uncontested Termination Agreement Form, GWP-Termination (eff.12/2020)

Local Government Ordinance Form, GWP-LGOF (rev. 8/2019)

Uniform Water Well Completion Report Form GW-2 (rev. 8/2016)

VA.R. Doc. No. R21-6550; Filed September 9, 2022, 8:16 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-610. Sewage Handling and Disposal Regulations (amending 12VAC5-610-120, 12VAC5-610-250, 12VAC5-610-880, 12VAC5-610-930, 12VAC5-610-950, 12VAC5-610-955, 12VAC5-610-960; adding 12VAC5-610-966).**

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 9, 2022.

Effective Date: November 24, 2022.

Agency Contact: Lance Gregory, Director, Onsite Sewage and Water Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491, FAX (804) 864-7475, or email lance.gregory@vdh.virginia.gov.

Basis: Sections 32.1-12 and 32.1-164 of the Code of Virginia provide that the State Board of Health has supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems and treatment works as they affect the public health and welfare.

Purpose: The purpose of the amendments are to establish minimum design and installation criteria for dispersal areas receiving treated wastewater. The Virginia Department of Health (VDH) and stakeholders have used design criteria contained in policy to ensure designs are protective of public health and the environment. While this process has allowed for permitting and design of such systems, incorporation of these criteria into the regulation is necessary to ensure clarity of design and installation criteria. The proposed changes are essential to protect the public health because currently there is no clear design criteria in regulation, and the original guidance was superseded by the Regulations for Alternative Onsite Sewage Systems (12VAC5-613). The confusion can lead to conflicts over designs submitted at a minimum and, more importantly, designs that are not as protective of public health being installed due to that confusion. The proposed changes address design ambiguity and design authority by clearly describing design requirements for systems utilizing treatment level 2 (TL-2) and treatment level 3 (TL-3) effluent.

Rationale: for Using Fast-Track Rulemaking Process: VDH worked closely with the Sewage Handling and Disposal Advisory Committee (SHADAC) to review existing guidance for designs to ensure previous guidance was still appropriate and to make improvements where necessary. The SHADAC includes representation from a wide range of program stakeholders, and, based on feedback from the SHADAC, VDH believes the proposed revisions will be noncontroversial and appropriate for the fast-track rulemaking process.

Substance: The proposed amendments modify the formal plan requirements for designs that meet the authorization limits for onsite soil evaluator designs under § 54.1-402 A 11 of the Code of Virginia. New definitions are added for wastewater treatment levels and others related to the addition of the new dispersal area requirements. Of primary importance are modifications to trench and elevated sand mound design criteria when treated wastewater is applied as well as the addition of a new dispersal method, pads, which are not currently in regulation. The amendments also include revisions to the section on pumps to clarify different standards for pumps integral to treatment systems and conveyance pumps for TL-2 or TL-3 effluent systems as compared to pumps dispersing septic tank wastewater from conventional systems.

Issues: The primary advantage the proposed amendments provide for homeowners, onsite sewage system designers, onsite sewage system installers, and VDH is clarity of design and installation criteria for dispersal systems receiving TL-2 and TL-3 effluent by codifying them in regulation. Moving the design criteria into regulation maintains the authority of onsite soil evaluators (OSEs) to utilize such designs as allowed by their licensure under § 54.1-402 A 11 of the Code of Virginia and maintains the cost effective nature of an owner to hire an OSE rather than the professional engineer for routine standard designs. This creates a disadvantage to the agency and stakeholders because future changes deemed necessary cannot be expedited quickly by agreed upon updates to guidance documents. The proposed amendments also provide an advantage for designers and system manufacturers by establishing clear criteria for pumps integral to treatment. This will help reduce any confusion with pump requirements contained in the regulations that were intended for pumps moving raw or minimally treated wastewater for dispersal, which is a different purpose and has different minimum requirements.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and

Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to incorporate in the regulation design and installation criteria for conveyance pump stations and dispersal areas utilizing certain treated effluent that are already followed under guidance documents and policy.

Background. The purpose of this fast-track rulemaking action is to incorporate in the Sewage Handling and Disposal Regulations (12VAC5-610) the design and installation criteria for conveyance pump stations and dispersal areas utilizing treated effluent (TL-2 and TL-3).[2] The Virginia Department of Health (VDH) states that historically the criteria were addressed via agency Guidance Memorandum and Policies (GMP). These types of designs were addressed piecemeal through product specific approvals beginning in 1995 and culminated in a comprehensive policy in 2009, known as GMP 147, which established a series of blanket variances to 12VAC5-610. These variances consisted of procedures for treatment units to receive general approval, hydraulic loading rates for alternative onsite sewage systems, and design and installation criteria for the dispersal areas.

GMP 147 was rescinded following promulgation of the Regulations for Alternative Onsite Sewage Systems (12VAC5-613, AOSS Regulations). However, those regulations are performance regulations and therefore did not include the specific design and installation criteria found in GMP 147. To address this gap, VDH issued GMP 2016-03,[3] and noted that designers could continue to use design guidance from rescinded GMP 147, which would be in compliance with the AOSS Regulations. However, parts of the rescinded GMP 147 are superseded by 12VAC5-613, so there is conflicting and extraneous information that makes it confusing as a definitive reference. In working to resolve the confusion, VDH determined that moving the policy into regulation was necessary to resolve the discrepancies and confusion and also to provide clear design instruction and authority to licensed professionals in Virginia.

Estimated Benefits and Costs. The proposed action mainly shifts into the regulation current design elements and procedural requirements for these designs to conform with those already allowed under current VDH guidance and policy. The main effect of these changes is to provide clarity to homeowners, onsite sewage system designers, onsite sewage system installers, and VDH staff.

One change from current agency policy from the proposed amendments is an increase in the depth of cover over dispersal systems receiving treated wastewater from four inches to six inches of cover. This is anticipated to have an average increased development cost of less than $500 for alternative system designs that require soil cover be brought in. However, VDH reports that most designers already utilize six inches or more of cover; therefore, the amendment would not impact most designs.

Businesses and Other Entities Affected. According to VDH, approximately 1,200 designs for alternative systems are received each year. Those systems are designed by onsite soil evaluators and professional engineers. Over the past year, 197 onsite soil evaluators and 90 professional engineers have submitted onsite sewage system designs to VDH. There are approximately 354 alternative onsite sewage system installers in the Commonwealth that could potentially install alternative systems, and 244 alternative onsite sewage system operators that could potentially maintain alternative systems.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[4] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, an increase in the depth of cover over dispersal systems from four inches to six inches of cover would add to compliance costs up to $500 if the owner would have otherwise used only four inches of cover. Thus, an adverse impact is indicated on owners of such alternative systems.

Small Businesses[5] Affected.[6] The proposed amendments do not appear to directly adversely affect small businesses.

Localities[7] Affected.[8] The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to be significant to noticeably affect total employment.

Effects on the Use and Value of Private Property. Increase in the depth of cover over dispersal systems from four inches to six inches would add to private real property development costs up to $500 if the owner would have otherwise used only four inches of cover.

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

[2]"TL-2" means treatment level 2, which is equivalent to a final effluent quality of less than or equal to 30 mg/l 5 Day Biochemical Oxygen Demand and 30 mg/l Total Suspended Solids.

"TL-3" means treatment level 3, which is equivalent to a final effluent quality of less than or equal to 10 mg/l 5 Day Biochemical Oxygen Demand and 10 mg/l Total Suspended Solids.

[3]https://townhall.virginia.gov/l/ViewGDoc.cfm?gdid=6000

[4]Pursuant to § 2.2-4007.04 D of the Code of Virginia: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate

Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

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

[7]"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.

[8]Section 2.2-4007.04 of the Code of Virginia defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis submitted by the Department of Planning and Budget.

Summary:

The amendments modify the formal plan requirements for onsite sewage system designs that meet the authorization limits for onsite soil evaluator designs under § 54.1-402 A 11 of the Code of Virginia, including (i) adding definitions for wastewater treatment levels and for new dispersal area requirements; (ii) changing trench and elevated sand mound design criteria when treated wastewater is applied; (iii) adding a new dispersal method, pads; and (iv) clarifying the different standards for pumps integral to treatment systems and conveyance pumps for treatment level 2 or treatment level 3 effluent systems as compared to pumps dispersing septic tank wastewater from conventional systems.

12VAC5-610-120. Definitions.

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

"Agent" means a legally authorized representative of the owner.

"Alluvial soil" means a soil developing from recently deposited alluvium and exhibiting essentially no horizon development or modification of the recently deposited materials.

"Alluvium" means mineral materials, either weathered or unweathered, that are transported by flowing water and deposited or redeposited in a flood-plain or marine terrace.

"Aquifer" means water-bearing portion of a geologic formation that transmits water.

"Biochemical oxygen demand, five-day" or "BOD_5" means the quantitative measure of the amount of oxygen consumed by bacteria while stabilizing, digesting, or treating biodegradable organic matter under aerobic conditions over a five-day incubation period; BOD_5 is expressed in milligrams per liter (mg/l).

"Certification letter" means a letter issued by the commissioner, in lieu of a construction permit, ~~which~~ that identifies a specific site and recognizes the appropriateness of the site for an onsite wastewater disposal system.

"Colluvial soil" means a soil developing from recently deposited colluvium and exhibiting essentially no horizon development or modification of the recently deposited materials.

"Colluvium" means an accumulation of soil material, or a mixture of stone fragments and soil material, deposited at the base of slopes or in depressional areas, primarily by gravity.

"Commissioner" means the State Health Commissioner or his subordinate who has been delegated powers in accordance with subdivision 2 of 12VAC5-610-40.

"Cr horizon" means weathered or soft bedrock and is used to indicate root restrictive layers or bedrock or saprolite.

"Dilution area" means the land immediately adjacent to and down gradient, in the direction of ground water flow, from a mass sewage disposal system, ~~which~~ that is provided for the purpose of diluting nitrogen, or other nutrients occurring in wastewater, with ambient ground water, in order to assure compliance with nutrient standards contained in this chapter.

"District health department" means a consolidation of local health departments as authorized in § 32.1-31 C of the Code of Virginia.

"Division" means the Division of Onsite Sewage and Water Services, Office of Environmental Health Services, State Health Department, or its administrative successor.

"Existing construction" (with failing sewage disposal systems) means an existing structure where the sewage disposal system serving the structure has failed or is currently in violation of state law or regulations and requires correction.

"General approval" means approval granted to systems ~~which~~ that are proven and tested in accordance with Article 2 (12VAC5-610-441 et seq.) of Part II of this chapter.

"Grandfathered lot" means:

1. Any lot upon which no permit has been issued and which is in a subdivision approved by the department prior to July 1, 2000, in accordance with a local subdivision ordinance. Individual lots may or may not have been evaluated; or

2. Any lot, parcel, or portion thereof with a previously issued permit or a specific written approval (not including a certification letter) from the department.

"Gray color" means a chroma-2 or less on the Munsell Color Chart.

"Impervious strata" means soil or soil materials with an estimated or measured percolation rate in excess of 120 minutes per inch.

"Infiltrative surface" means the designated interface where effluent moves from distribution piping, media, and fill to natural soil.

"Local health department" means a branch of the State Health Department established in each city and county in accordance with § 32.1-30 of the Code of Virginia.

"Mass sewage disposal system" means a sewage disposal system or systems ~~which~~ that will discharge effluent to a single absorption area or multiple absorption areas with or without combined flows, such that the loading rate applied to any acre, as determined by the department, exceeds 1,200 gallons per day.

"Mineral soil" means a soil consisting predominantly of, and having its properties determined predominantly by, mineral matter. A mineral soil usually contains less than 20% organic matter, but it may contain an organic surface layer up to 12 inches thick.

"New construction" means construction of a building for which a building permit is required.

"Office" means the Office of Environmental Health Services, State Health Department.

"Owner" means the Commonwealth or any of its political subdivisions, including sanitary districts, sanitation district commissions and authorities, any individual, any group of individuals acting individually or as a group, or any public or private institution, corporation, company, partnership, firm, or association which owns or proposes to own a sewerage system or treatment works.

"Person" means an individual, corporation, partnership, association, or any other legal entity.

"Previously issued permit" means any permit issued prior to July 1, 2000, and in accordance with the regulations in effect at the time the permit was issued. There is no distinction between an expired permit and one that has been continually renewed.

"Pump and haul" means any unusual circumstance wherein sewage is permitted to be transported by vehicle to a point of disposal. The term "pump and haul" includes all facilities and appurtenances necessary to collect and store the sewage for handling by a contractor having a valid sewage handling permit.

"Rock" or "bedrock" means continuous, coherent, lithologic material that has relative hardness depending on the degree of weathering. Bedrock has characteristics such as strike, dip, jointing, and lithological compositions. Structure and water movement are rock controlled. Bedrock grinds with an auger, and mechanical penetration is more difficult or prevented as the material gets harder.

"Saprolite" means material weathered from igneous or metamorphic rock, without soil structure, and with remnant structure and fabric of the parent rock which is soft in place and can be penetrated easily with an auger.

"Secondary effluent" means effluent treated to reduce five-day biochemical oxygen demand to 30 mg/l or less, total suspended solids to 30 mg/l or less, and fats, oils, and grease to less than 5 mg/l.

"Septic tank effluent" means effluent characterized by a five-day biochemical oxygen demand between 120 and 200 mg/l; total suspended solids between 70 and 150 mg/l; fats, oils, and grease of 30 mg/l or less; and having no other toxic, hazardous, or constituents not routinely found in residential wastewater flows.

"Septage" means the mat of grease and scum on the surface of septic tanks, the accumulated sludge at the bottom of tanks and the sewage present at the time of pumping.

"Sewage" means water-carried and nonwater-carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm, or other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage disposal system" means a sewerage system or treatment works designed not to result in a point source discharge.

"Sewage handler" means any person who removes or contracts to remove and transports by vehicle the contents of any septic tank, sewage treatment plant, privy, holding tank, portable toilet, or any sewage, septage, or sewage sludges ~~which~~ that have been processed to meet acceptable treatment standards as defined in this chapter or the Sewage Regulations (12VAC5-580-10 et seq.).

"Sewage handling" means the vehicular conveyance of sewage (See "Transportation" in § 32.1-163 of the Code of Virginia).

"Sewerage system" means pipe lines or conduits, pumping stations and force mains and all other construction, devices, and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Shrink-swell soils" means soils with horizons that contain montmorillonite and other clays that excessively shrink upon drying and swell upon wetting.

"Sink hole" means a depression in the topography without a surface outlet for drainage from the low point. Sink holes are common in areas containing limestone and generally result from the collapse of solution cavities.

"Soil" means the weathered mineral and organic fraction of the earth's regolith, which is less than or equal to 2.0 mm in size as observed in place. Soil comprises sands, silts, or clays or combinations of these textured components and may contain larger aggregate materials such as gravel, cobbles, stones, or channers or precipitates from aqueous solution. Soil includes the A, O, B, C, and E horizons.

"Soil horizon" means a layer of soil or soil material approximately parallel to the land surface and different from adjacent genetically related layers in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistency, kinds, and numbers of organisms present, degree of acidity or alkalinity, etc.

"Subdivision" means multiple building lots derived from a parcel or parcels of land.

"Subsurface soil absorption" means a process which utilizes the soil to treat and dispose of effluent from a treatment works. (Also see "Subsurface drainfield" in § 32.1-163 of the Code of Virginia).

"Total suspended solids" or "TSS" means a measure of the mass of all suspended solids in a sample typically measured in milligrams per liter (mg/l).

"Treatment level 2 effluent" or "TL-2 effluent" means secondary effluent as defined in this section that has been treated to produce BOD_5 and TSS concentrations equal to or less than 30 mg/l each.

"Treatment level 3 effluent" or "TL-3 effluent" means effluent that has been treated to produce BOD_5 and TSS concentrations equal to or less than 10 mg/l each.

"Treatment unit" or "treatment system" means a method, technique, equipment, or process other than a septic tank used to treat sewage to produce effluent of a specified quality before the effluent is dispersed to a soil treatment area.

"Treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including ~~but not limited to~~ pumping, power, and other equipment and appurtenances, septic tanks, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluent resulting from such treatment.

"Working volume" means the volume in a pump tank between the pump off level and the high water alarm level.

12VAC5-610-250. Procedures for obtaining a construction permit for a sewage disposal system.

Construction permits are issued by the commissioner but all requests for a sewage disposal construction permit shall be directed initially to the district or local health department. For construction permits with design flows less than 1,000 gallons per day that are exempt from the license requirements for professional engineers under § 54.1-402 A 11 of the Code of Virginia, the requirement for formal plans and specifications is waived.

A. Type I. A Type I sewage disposal system is an individual sewage disposal system incorporating a septic tank and subsurface soil absorption (septic tank-subsurface drainfield) serving a single residence. The submission of an application is all that is normally necessary to initiate procedure for obtaining a permit under this subsection. If after a site investigation, it is determined that pumping, enhanced flow distribution (see 12VAC5-610-930 A) or low pressure distribution (see 12VAC5-610-940) is necessary, the system shall be considered a Type II system.

B. Type II. A Type II sewage disposal system is a sewage disposal system incorporating a septic tank and subsurface soil absorption system which serves a commercial or other establishment, more than a single family dwelling unit, or where pumping, enhanced flow distribution (see 12VAC5-610-930 A) or low pressure distribution (see 12VAC5-610-940) is necessary. The procedure for obtaining a permit includes the following steps:

1. The submission of an application;

2. A preliminary conference as necessary; and

3. The submission of informal plans, specifications, design criteria, and other data, as may be required by the district or local health department. Depending on the size and complexity of the system, the submission of formal plans and specifications may be required.

C. Type III. A Type III sewage disposal system includes sewage disposal systems other than a septic tank subsurface soil absorption system, and subsurface soil absorption systems, regardless of design, with design flows greater than 1,000 gpd. The procedure for obtaining a permit under this subsection includes the following steps:

1. The submission of an application;

2. A preliminary conference; and

3. The submission of formal plans, specifications, and design criteria. Other supporting data may be required on a case-by-case basis.

When high strength wastes are proposed for subsurface disposal, the treatment methodology shall comply with the requirements found in 12VAC5-580-10 et seq. of the Sewage Regulations.

D. Type IV-Privies. The submission of an application is all that is normally necessary to initiate the procedure for obtaining a permit under this section.

E. Application. All applications for any type sewage disposal system shall be made on an application form provided by the district or local health department and approved by the department.

F. Preliminary conference. A preliminary conference with the district or local health department is held for Type II and Type III systems. When a Type III system for septage disposal is planned, the conference shall be with the department. At such conference the owner ~~and/or~~ or his agent shall be prepared to set forth the sewage disposal problems and the proposed solution in such a manner to support his conclusions and recommendations.

G. Formal plans.

1. All formal plans for sewage disposal systems shall bear a suitable title showing the name of the owner and shall show the scale in feet, a graphical scale, the north point, date, and the name of the licensed professional engineer by or under whom prepared. The cover sheet and each plan sheet shall bear the same general title identifying the overall sewage disposal project and each shall be numbered. Appropriate subtitles should be included on the individual sheets.

The plans shall be clear and legible. They shall be drawn to a scale which will permit all necessary information to be plainly shown. The size of the plans should be no larger than 30 inches by 48 inches. Data used should be indicated. Location, when made, shall be shown on the plans. Logs of test borings shall be given either on plans or in the specifications.

Detailed plans shall consist of plan views, elevations, sections, and supplementary views ~~which~~ that together with the specifications and general layouts provide the working information for the contract and construction of the work, including dimensions and relative elevations of structures, the location and outline form of equipment, the location and size of piping, water levels, ground elevations, and erosion control abatement facilities.

2. Geographical and other features. Topography, elevations (contour lines), existing or proposed streets and all bodies of water, ditches, buildings, springs, cisterns, and wells within 100 feet horizontally of the proposed sewage disposal system site ~~and/or~~ and well, a water mounding analysis showing the impact of the proposed sewage system on ground water and all property lines shall be clearly shown.

3. General layout. The general layout shall show the following:

a. Test borings, ground water elevation (if observed), and soil profiles;

b. Size and location of sewage disposal systems;

c. Schematic flow diagram showing the flow through the various disposal system units;

d. Piping; and

e. Hydraulic profile showing the flow of sewage.

4. Detailed plans. Detailed plans shall show the following:

a. Location, dimensions, and elevations of existing or proposed system facilities;

b. Pertinent data concerning the rated capacity of pumps, blowers, motors, and other mechanical devices. All or part of such data may be included in the specifications by suitable reference on the plans;

c. Average and maximum hydraulic flow in profile; and

d. Adequate description of any features not otherwise covered by the specifications.

H. Formal specifications. Complete technical specifications for the construction of the sewage disposal system and all appurtenances shall accompany the plans. The specifications accompanying construction drawings shall include~~, but not be limited to,~~ all construction information not shown on the drawings, which is necessary to inform the builder in detail of the design requirements as to the quality of material workmanship and fabrication of the project, type, size, strength, operating characteristics, and rating of equipment; allowable infiltration, machinery, valves, piping, and jointing of pipe, electrical apparatus, wiring and meters; operating tools and construction materials; special filter materials such as stone, sand, gravel, or slag; miscellaneous appurtenances; chemicals when used; instructions for testing materials and equipment as necessary to meet design standards and operating test for the complete works and component units.

I. Special requirements for certain sewage disposal systems. A construction permit for a single sewage disposal system proposed to serve a dwelling unit with multiple living units, multiple dwelling units or multiple lots with dwelling units shall be issued only to a single owner. The owner shall provide legal documentation to assure operation and the maintenance of the system for the expected life of the living units or dwellings.

J. Construction permit with conditions.

1. Definition: "Conditional construction permit" means a permit authorizing the installation of a septic tank subsurface soil absorption system which does not fully conform to the criteria in Part V (12VAC5-610-660 et seq.) of this chapter pertaining to septic tank size, subsurface soil absorption system size and certain ground water table conditions as indicated by soil evaluation, but which, under the conditions to which the permit is subject, can be reasonably expected to function without danger to public health.

2. The purpose of this section is to allow for the issuance of conditional construction permits. Procedures for obtaining a

conditional construction permit are the same as those contained in subsections A, B, C, and D of this section.

3. Conditional construction permits may be issued for any one or more of the following use conditions when satisfactory substantiation is provided by the applicant:

a. Reduced water flow based on permanent water saving plumbing devices;

b. Limitations on the number of persons occupying the dwelling or using the facility served by the proposed septic tank system;

c. Intermittent or seasonal use of the dwelling or facility served by the septic tank system; and

d. Temporary use of the septic tank system for a specified time period not to exceed one year. Such permits may be renewable when the commissioner determines there is a good cause for renewal.

4. Criteria.

a. The septic tank ~~and/or~~ or drainfield size may be reduced based on the use conditions contained in subdivision 3 a, b, c, or d of this subsection.

b. In areas with seasonal fluctuating water ~~table(s)~~ tables, where the seasonally high water table would cause failure if the system were to be used continuously, septic tank systems may be installed when the period of use of the septic tank system coincides with the period when the ground water table, as indicated by free water, is at its lowest level. Acceptable separation distances to free standing ground water are the same as those found in Tables 4.3 and 4.4 of this chapter.

c. Because of the increased risk of failure, a conditional permit shall not be issued, in an area with a seasonally fluctuating water table if the proposed absorption area is within 200 feet of a shellfish growing area, recreational waters, or a public water supply impoundment.

5. The district or local health department shall affix to the conditional construction permit a clear and concise statement relating the conditions and circumstances ~~which~~ that formed the basis for issuing the conditional permit as well as the owner's obligations under the permit.

6. The holder of any conditional construction permit shall have the permit recorded and indexed in the grantor index under the holder's name in the land records of the clerk of the circuit court having jurisdiction over the site of the septic tank system. District or local health departments shall be provided with certification that the conditional septic tank system permit has been recorded in the land records of the circuit court. The conditional permit shall become effective one day after the district or local health department receives notification of recordation. The district or local health department shall advise the local building official that conditional septic tank system permits are not valid without certification that the permits have been properly recorded as required and shall forthwith notify the local building official when the conditional permit becomes effective. Final approval of the construction of the septic tank subsurface soil absorption system shall not be given until or unless the system is constructed in accordance with the conditions of the permit. The operation permit will be issued in accordance with 12VAC5-610-340.

7. As per § 32.1-164.1 of the Code of Virginia, the holder of the permit and any subsequent holders of the permit shall be bound by the conditions stated in the permit unless the holder or subsequent holder obtains an additional permit for modification or alteration of the septic tank system to meet any new use conditions.

12VAC5-610-880. Pumping.

A. Force mains in general.

1. Velocity. At pumping capacity, a minimum self-scouring velocity of two feet per second shall be maintained. A velocity of eight feet per second should not be exceeded.

2. Air relief valve. Air relief valves shall be placed at high points in the force main, as necessary, to relieve air locking.

3. Bedding. All force mains shall be bedded to supply uniform support along their length.

4. Protection against freezing. Force mains shall be placed deep enough to prevent freezing.

5. Location. Force mains shall not pass closer than 50 feet to any drinking water source unless pressure tested in place at pump shut-off head. Under no circumstances shall a force main come within 10 feet of a nonpublic drinking water source.

6. Materials of construction. All pipe used for force mains shall be of the pressure type with pressure type joints.

7. Anchors. Force mains shall be sufficiently anchored within the pump station and throughout the line length. The number of bends shall be as few as possible. Thrust blocks, restrained joints and/or tie rods shall be provided where restraint is needed.

8. Backfilling and tamping. Force main trenches shall be backfilled and tamped as soon as possible after the installation of the force main has been approved. Material for backfilling shall be free of large stones and debris.

B. Pumping station and pumps in general.

1. Sizing. Pumping station wet wells shall provide at least one quarter (1/4) day storage above the high level alarm set point. Actual volume between high and low level limits is determined on a case-by-case basis depending on the objective of pumping: (i) when low pressure dosing is utilized see 12VAC5-610-940 A for sizing requirements; (ii) when pumping to a gravity distribution box the wet well shall be sized to provide a working volume between 1/4 the

daily flow and the daily flow; (iii) when pumping for the purpose of enhancing flow distribution (see 12VAC5-610-930 A) the working volume of the wet ~~wall~~ well shall be 0.6 of the volume of the percolation piping.

2. Materials. Materials for construction of pumping stations are the same as for septic tanks (see 12VAC5-610-810). All materials and equipment utilized in pumping stations shall be unaffected by the corrosive action of sewage.

3. Access. An access manhole terminating above the ground surface shall be provided. The manhole shall have a minimum width dimension of 24 inches and shall be provided with a shoe box type cover adequately secured.

4. Construction. Pumping stations constructed of precast or poured in place concrete shall conform with the construction requirements contained in 12VAC5-610-815 E. When precast concrete pipe is utilized for a pumping station, the pipe shall be placed on and bonded to a concrete pad at least six inches thick and having a width at least one foot greater than the diameter of the pipe. All pumping stations shall be watertight. All conduits entering or leaving the pumping stations shall be provided with a water stop. The influent pipe shall enter the pumping station at an elevation at least one inch higher than the maximum water level in the wet well (total usable volume).

5. Installation. Placement of pumping stations shall conform to the requirements for placement of septic tanks contained in 12VAC5-610-815 F.

6. Pumps. All pumps utilized shall be of the open face centrifugal, vertical turbine, or suction lift type designed to pump sewage. Pumps utilized for the sole purpose of pumping effluent to a higher elevation shall have a capacity approximately 2.5 times the average daily flow in gallons per minute but not less than five gallons per minute at the system head. Pumps utilized for the purpose of enhancing flow distribution (See 12VAC5-610-930 A) shall have a minimum capacity of 36 gallons per minute at system head per 1200 linear feet of percolation piping. Pumps discharging to a low pressure distribution system shall be sized in accordance with 12VAC5-610-940 A. Dual alternating pumps are required on systems 1800 linear feet or greater in accordance with 12VAC5-610-930 B. Pumps shall be so placed that under normal start conditions it shall be subjected to a positive suction head. When multiple pumps are used, each pump shall have its own separate suction line. Suitable shutoff valves shall be provided on the discharge line and suction line (if provided) for normal pump isolation. A check valve shall be placed in the discharge line between the pump and shutoff valve. When the pump discharge is at a lower elevation than the high liquid level in the pump station, an antisiphon device shall be provided on the pump discharge. Pumps shall be piped so that they can be removed for servicing without having to dewater the wet well.

7. Controls. Each pumping station shall be provided with controls for automatically starting and stopping the pumps ~~based on water level~~. When float type controls are utilized, they shall be placed so as to be unaffected by the flow entering the wet well. Provisions shall be made for automatically alternating the pumps. The electrical motor control center and master disconnect switch shall be placed in a secure location above grade and remote from the pump station. Each motor control center shall be provided with a manual override switch. The control panel shall be located to allow for working access, taking into consideration the finished ground surface elevation.

8. Alarms. A high water alarm with remote sensing and electrical circuitry separate from the motor control center circuitry shall be provided. The alarm shall be audiovisual and shall alarm in an area where it may be easily monitored. When multiple pumps are utilized, an additional audiovisual alarm shall be provided to alarm when a pump motor fails to start on demand.

9. Ventilation. Positive ventilation shall be provided at pumping stations when personnel are required to enter the station for routine maintenance.

a. Wet wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least 12 complete air changes per hour; if intermittent, at least 30 complete air changes per hour. Such ventilation shall be accomplished by mechanical means.

b. Dry wells. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least six complete air changes per hour; if intermittent, at least 30 complete air changes per hour. Such ventilation shall be accomplished by mechanical means.

C. Conveyance pumps and pump stations that move TL-2 effluent or TL-3 effluent to a soil dispersal system shall comply with the following.

1. Subsection A of this section shall apply, except that the minimum velocity in the force main may be reduced to one foot per second.

2. Pump station wet wells shall provide at least one-quarter-day storage above the high level alarm set point. Alternatively, storage may be provided in a treatment tank such as a recirculation tank, but the maximum water level must be one inch below the invert of the pipe from the septic tank.

3. Subdivisions B 2, B 3, B 4, B 5, B 7, B 8, and B 9 of this section shall apply.

4. All pumps utilized shall be of the open face centrifugal, vertical turbine, or suction lift type designed to pump sewage.

a. Pumps utilized for the purpose of enhancing flow distribution (See 12VAC5-610-930 A) shall have a

minimum capacity of 36 gallons per minute at system head per 1,200 linear feet of percolation piping.

b. Pumps discharging to a low pressure distribution system shall be sized in accordance with 12VAC5-610-940.

c. Dual alternating pumps are required on systems 1,800 linear feet or greater in accordance with 12VAC5-610-930 B.

d. Submersible pumps shall be placed so that under normal start conditions the pump shall be subjected to a positive suction head.

e. When multiple pumps are used, each pump shall have its own separate suction line. Suitable shutoff valves shall be provided on the discharge line and suction line (if provided) for normal pump isolation. A check valve shall be placed in the discharge line between the pump and shutoff valve. When the pump discharge is at a lower elevation than the high liquid level in the pump station, an anti-siphon device shall be provided on the pump discharge. Pumps shall be piped so that they can be removed for servicing without having to dewater the wet well.

D. Pumps integral to treatment systems are pumps that move wastewater within the treatment unit and are required to achieve the desired effluent quality. Subsections A, B, and C of this section do not apply to these integral pumps.

12VAC5-610-930. Gravity distribution.

Gravity distribution is the conveyance of effluent from a distribution box through the percolation lines at less than full flow conditions. Flow to the initial distribution box may be initiated by pump, siphon or gravity.

A. Enhanced flow distribution. Enhanced flow distribution is the initiation of the effluent flow to the distribution box by pump or siphon for the purpose of assuring more uniform flow splitting to the percolation lines. Enhanced flow distribution shall be provided on systems where the flow is split more than 12 times or the system contains more than 1200 linear feet of percolation lines. For the purpose of this chapter, enhanced flow distribution is considered to produce unsaturated soil conditions.

B. System size. Distribution systems containing 1800 or more linear feet of percolation piping shall be split into multiple systems containing a maximum of 1200 linear feet of percolation piping per system.

C. Distribution boxes. The distribution box is a device for splitting flow equally by gravity to points in the system. Improperly installed distribution boxes are a cause for absorption field malfunction.

1. Materials. The preferred material for use in constructing distribution boxes is concrete (3000 psi). Other materials may be considered on a case-by-case basis. All materials must be resistant to both chemical and electrolytic corrosion and must have sufficient structural strength to contain sewage and resist lateral compressive and bearing loads.

2. Design. Each distribution box shall be designed to split the influent flow equally among the multiple effluent ports. All effluent ports shall be at the same elevation and be of the same diameter. The elevation of the effluent ports shall be at a lower elevation than the influent port. The placement of the influent ports shall be such as to prevent short circuiting unless baffling is provided to prevent short circuiting. The minimum inside width of a gravity flow distribution box shall be equal to or greater than 12 inches. The inside bottom shall be at least four inches below the invert of the effluent ports and at least five inches below the invert of the influent port. A minimum of eight inches freeboard above the invert of the effluent piping shall be provided. The distribution box shall be fitted with a watertight, removable lid for access.

3. Installation. The hole for placement of the distribution box shall be excavated to undisturbed soil. The distribution box shall be placed in the excavation and stabilized. The preferred method of stabilizing the distribution box is to bond the distribution box to a four inch poured in place Portland cement concrete pad with dimensions six inches greater than the length and width dimensions of the distribution box. The box shall be permanently leveled and checked by water testing. Conduits passing through the walls of a distribution box shall be provided with a water stop.

D. Lead or header lines. Header or lead lines are watertight, semirigid, or rigid lines that convey effluent from a distribution box to another box or to the percolation piping.

1. Size. The lead or header lines shall have an internal diameter of four inches.

2. Slope. Minimum slope shall be two inches per 100 feet.

3. Materials. The lead or header lines shall have a minimum crush strength of 1500 pounds per foot and may be constructed of cast iron, plastic, vitrified clay, or other material resistant to the corrosive action of sewage.

4. Appurtenances.

a. Joints. Lead or header lines shall have joints of the compressions type with the exception of plastic lead or header lines ~~which~~ that may be welded sleeve, chemically fused, or clamped (noncorrosive) flexible sleeve.

b. Adapters. Joining of lead or header lines of different size or material shall be accomplished by use of a manufactured adapter specifically designed for the purpose.

c. Valves. Valves shall be constructed of materials resistant to the corrosive action of sewage. Valves placed below ground level shall be provided with a valve box and a suitable valve stem so that it may be operated from the ground surface.

5. Construction.

a. Bedding. All lead or header lines shall be bedded to supply uniform support and maintain grade and alignment along the length of the lead or header lines. Special care shall be taken when using semirigid pipe.

b. Backfilling and tamping. Lead and header lines shall be backfilled and tamped as soon as possible after the installation of the lead or header lines has been approved. Material for backfilling shall be free of large stones and debris.

6. Termination. Header or lead lines shall extend for a minimum distance of two feet into the absorption trenches.

E. Gravity percolation lines. Gravity percolation lines are perforated or open joint pipes that are utilized to distribute the effluent along the length of the absorption trenches.

1. Size. All gravity percolation lines shall have an internal diameter of four inches.

2. Slope. The slope of the lines shall be uniform and shall not be less than two inches or more than four inches per 100 feet.

3. Design. Effluent shall be split by the distribution system so that all gravity percolation lines installed shall receive an equal volume of the total design effluent load per square foot of trench, i.e., the fraction of the flow received by each percolation line divided by the length of the gravity percolation lines shall be equal for all gravity percolation lines in a system.

4. Length. No individual gravity percolation line shall exceed 100 feet in length.

5. Materials.

a. Clay. Clay tile shall be extra-strength and meet current ASTM standards for clay tile.

b. Perforated plastic drainage tubing. Perforated plastic drainage tubing shall meet ASTM standards. At not greater than 10 feet intervals the pipe shall be plainly marked, embossed, or engraved thereby showing the manufacturer's name or hallmark and showing that the product meets a bearing load of 1,000 lb. per foot. In addition, a painted or other clearly marked line or spot shall be marked at not greater than 10 feet intervals to denote the top of the pipe.

The tubing shall have three holes, 1/2 to 3/4 inch in diameter evenly spaced and placed within an arc of 130 degrees, the center hole being directly opposite the top marking.

Spacing of each set of three holes shall be at four inch intervals along the tube. If there is any break in the continuity of the tubing, an appropriate connection shall be used to join the tubing.

6. Installation.

a. Crushed stone or gravel. Clean gravel or crushed stone having a size range from 1/2 inch to 1-1/2 inches shall be utilized to bed the gravity percolation lines.

Minimum depth of gravel or crushed stone beneath the percolation lines shall be six inches. Clean course silica sand (does not effervesce in presence of dilute hydrochloric acid) may be substituted for the first two inches (soil interface) of the required six inches of gravel beneath the percolation lines. The absorption trench shall be backfilled to a depth of two inches over the gravity percolation lines with the same gravel or crushed stone. Clean sand, gravel, or crushed stone shall be free of fines, clay, and organic materials.

b. Grade boards or stakes. Grade boards or stakes placed in the bottom or sidewalls of the absorption trench shall be utilized to maintain the grade on the gravel for placement of the gravity percolation lines. Grade stakes shall not be placed on centers greater than 10 feet.

c. Placement and alignment. Perforated gravity percolation piping shall be placed so that the center hole is in the horizontal plane and interfaces with the minimum six inches of graded gravel. When open joint piping is utilized the upper half of the top of the 1/4-inch open space shall be covered with tar paper or building paper to block the entrance of fines into the pipe during the backfilling operation. All gravity percolating piping shall be placed in the horizontal center of the absorption trench and shall maintain a straight alignment and uniform grade.

d. Backfilling. After the placement of the gravity percolation piping the absorption trench shall be backfilled evenly with crushed stone or gravel to a depth of two inches over the piping. Untreated building paper or other suitable material shall be placed at the interface of the gravel and soil to prevent migration of fines to the trench bottom. The remainder of the trench shall be backfilled with soil to the ground surface.

F. Gravelless material is a proprietary product specifically manufactured to disperse effluent within the absorption trench of an onsite sewage system without the use of gravel. Gravelless material may include chamber, bundled expanded polystyrene, and multi-pipe systems. The division shall maintain a list of all generally approved gravelless material. Gravelless material on the generally approved list may be used in accordance with Table 5.4 of 12VAC5-610-950.

1. Gravelless material that received general approval as of December 12, 2013, shall retain such status when used in accordance with the requirements of this chapter. After December 12, 2013, the division shall review and evaluate new applications for general approval pursuant to the requirements of this chapter.

a. Any manufacturer of gravelless material may submit an application for general approval to the division using a form provided by the division. A complete application

shall include the manufacturer's contact information, product specifications, product approvals in other states or territories, installation manual, and other information deemed necessary by the division to determine compliance with this chapter.

b. The manufacturer of gravelless material shall identify in the application for general approval any recommendation that deviates from the requirements of this chapter. If the recommendation is approved by the division, then the manufacturer shall include the deviation in the gravelless material's installation manual.

2. Gravelless material shall have the following minimum characteristics for general approval:

a. The minimum exterior width shall be at least 90% of the total width of the absorption trench. The exterior width of a chamber system shall be measured at the edge or outer limit of the product's contact with the trench bottom unless the division determines a different measurement is required based on the gravelless material's design. The exterior width of bundled expanded polystyrene and multi-pipe systems shall be measured using the outside diameter of the bundled gravelless material unless the division determines a different measurement is required based on the gravelless material's design. The division shall establish the exterior width of any gravelless material that is not considered a chamber, bundled expanded polystyrene, or multi-pipe system.

b. Gravelless material shall have a minimum height of eight inches to provide a continuous exchange of air through a permeable interface.

c. Gravelless material shall have a permeable interface that shall be located along the trench bottom and trench sidewalls within the absorption trench.

d. Gravelless material shall provide a minimum storage capacity of 1.3 gallons per square foot of trench bottom area.

e. Gravelless material shall pose no greater risk to surface water and groundwater quality than gravel in absorption trenches. Gravelless material shall be constructed to maintain structural integrity such that it does not decay or corrode when exposed to effluent.

f. Gravelless material shall have a minimum load rating of H-10 or H-20 from the American Association of State Highway and Transportation Officials or equivalent when installed in accordance with the manufacturer's specifications and minimum specified depth of cover in nontraffic or traffic areas, respectively.

3. For designs using gravelless material, the absorption trenches shall receive an equal volume of effluent per square foot of trench. Trench bottom area shall be equal to or greater than the minimum area requirements contained in Table 5.4 or Table 5.5 of 12VAC5-610-950. Trench sidewall shall not be included when determining minimum area requirements.

When open-bottom gravelless material is utilized, it shall provide a splash plate at the inlet of the trench or other suitable method approved by the manufacturer to reduce effluent velocity.

4. Installation of gravelless material shall comply with this chapter and the approved installation manual unless the department grants a deviation pursuant to 12VAC5-610-660 or the division has granted a deviation identified in the installation manual.

5. Gravelless material shall contain a pressure percolation line along the entire length of the trench when low pressure distribution is utilized pursuant to 12VAC5-610-940 D.

6. When pumping effluent to overcome gravity, any open-bottom gravelless material shall provide a high-flow splash plate at the inlet of the trench or other suitable method approved by the manufacturer to reduce effluent velocity.

7. When enhanced flow distribution is used, open-bottom gravelless material shall contain a percolation pipe that extends a minimum of 10 feet from the trench's intersection with the header line. The percolation pipe shall be installed in accordance with the manufacturer's approved installation manual. The dosing volume shall be a minimum 39 gallons per 100 linear feet of absorption trench.

8. Gravelless material may be substituted for gravel in accordance with this chapter, provided that the certifying licensed professional engineer or onsite soil evaluator approves the substitution. The certifying licensed professional engineer or onsite soil evaluator shall document the substitution and related design changes on the inspection report submitted in accordance with 12VAC5-610-330. A new construction permit pursuant to 12VAC5-610-310 is not required for the substitution.

12VAC5-610-950. Absorption area design.

A. The absorption area is the undisturbed soil medium utilized for absorption of the effluent. The absorption area includes the infiltrative surface in the absorption trench and the soil between and around the trenches when trenches are used.

B. Suitability of soil horizon. The absorption trench bottom shall be placed in the soil horizon or horizons with an average estimated or measured percolation rate less than 120 minutes per inch. Soil horizons are to be identified in accordance with 12VAC5-610-480. The soil horizon must meet the following minimum conditions:

1. It shall have an estimated or measured percolation rate equal to or less than 120 minutes per inch;

2. The soil horizon or horizons shall be of sufficient thickness so that at least 12 inches of absorption trench sidewall is exposed to act as an infiltrative surface; and

3. If no single horizon meets the conditions in subdivision 2 of this subsection, a combination of adjacent horizons may

be utilized to provide the required 12-inch sidewall infiltrative surface. However, no horizon utilized shall have an estimated or measured percolation rate greater than 120 minutes/inch.

C. Placement of absorption trenches below soil restrictions. Placement of the soil absorption trench bottom below soil restrictions as defined in 12VAC5-610-490 D, whether or not there is evidence of a perched water table as indicated by free standing water or ~~gray mottlings or coloration,~~ redoximorphic features, including concentrations, depletions, or stains, nodules, or concretions of iron and manganese, requires a special design based on the following criteria:

1. The soil horizon into which the absorption trench bottom is placed shall be a Texture Group I, II, or III soil or have an estimated or measured percolation rate of less than 91 minutes per inch.

2. The soil horizon shall be a minimum of three feet thick and shall exhibit no characteristics that indicate wetness on restriction of water movement. The absorption trench bottom shall be placed so that at least two feet of the soil horizon separates the trench bottom from the water table or rock. At least one foot of the absorption trench side wall shall penetrate the soil horizon.

3. A lateral ground water movement interceptor (LGMI) shall be placed upslope of the absorption area. The LGMI shall be placed perpendicular to the general slope of the land. The invert of the LGMI shall extend into, but not through, the restriction and shall extend for a distance of 10 feet on ~~either side~~ both sides of the absorption area (See 12VAC5-610-700 D 3).

4. Pits shall be constructed to facilitate soil evaluations as necessary.

D. Sizing of absorption trench area for septic tank effluent.

1. Required area. The total absorption trench bottom area required shall be based on the average estimated or measured percolation rate for the soil horizon or horizons into which the absorption trench is to be placed. If more than one soil horizon is utilized to meet the sidewall infiltrative surface required in subsection B of this section, the absorption trench bottom area shall be based on the average estimated or measured percolation rate of the "slowest" horizon. The trench bottom area required in square feet per 100 gallons (Ft^2/100 Gals) of sewage applied for various soil percolation rates is tabulated in Table 5.4. The area requirements are based on the equation:

$\log y = 2.00 + 0.008 (x)$

where $y = Ft^2$/100 Gals

x = Percolation rate in minutes/inch

Notwithstanding the above, the minimum absorption area for single family residential dwellings shall be 400 square feet.

2. Area reduction. See Table 5.4 for area reduction when gravelless material or low pressure distribution is utilized. A reduction in area shall not be permitted when flow diversion is utilized with low pressure distribution. When gravelless material is utilized, the design width of the trench shall be used to calculate minimum area requirements for absorption trenches.

E. Minimum cross section dimensions for absorption trenches.

1. Depth. The minimum trench sidewall depth as measured from the surface of the mineral soil shall be 12 inches when placed in a landscape with a slope less than 10%. The installation depth shall be measured on the downhill side of the absorption trench. When the installation depth is less than 18 inches, the depth shall be measured from the lowest elevation in the microtopography. All systems shall be provided with at least 12 inches of cover to prevent frost penetration and provide physical protection to the absorption trench; however, this requirement for additional cover shall not apply to systems installed on slopes of 30% or greater. Where additional soil cover must be provided to meet this minimum, it must be added prior to construction of the absorption field, and it must be crowned to provide positive drainage away from the absorption field. The minimum trench depth shall be increased by at least five inches for every 10% increase in slope. Sidewall depth is measured from the ground surface on the downhill side of the trench.

2. Width. All absorption trenches utilized with gravity distribution shall have a width of from 18 inches to 36 inches. All absorption trenches utilized with low pressure distribution shall have a width of eight inches to 24 inches.

F. Lateral separation of absorption trenches. The absorption trenches shall be separated by a center to center distance no less than three times the width of the trench for slopes up to 10%. However, where trench bottoms are two feet or more above rock, pans, and impervious strata, the absorption trenches shall be separated by a center to center distance no less than three times the width of the trench for slopes up to 20%. The minimum horizontal separation distance shall be increased by one foot for every 10% increase in slope. In no case shall the center to center distance be less than 30 inches.

G. Slope of absorption trench bottoms.

1. Gravity distribution. The bottom of each absorption trench shall have a uniform slope not less than two inches or more than four inches per 100 feet.

2. Low pressure distribution. The bottom of each absorption trench shall be uniformly level to prevent ponding of effluent.

H. Placement of absorption trenches in the landscape.

1. The absorption trenches shall be placed on contour.

2. When the ground surface in the area over the absorption trenches is at a higher elevation than any plumbing fixture or fixtures, sewage from the plumbing fixture or fixtures shall be pumped.

I. Lateral ground water movement interceptors. Where subsurface, laterally moving water is expected to adversely affect an absorption system, a lateral ground water movement interceptor (LGMI) shall be placed upslope of the absorption area. The LGMI shall be placed perpendicular to the general slope of the land. The invert of the LGMI shall extend into, but not through, the restriction and shall extend for a distance of 10 feet on either side of the absorption area.

Table 5.4.
Area Requirements for Absorption Trenches Receiving Septic Tank Effluent.

Percolation Rate (Minutes/Inch)	Area Required (Ft^2/100 Gals)			Area Required (Ft^2/Bedroom)		
	Gravity	Gravity Gravelless	Low Pressure Distribution	Gravity	Gravity Gravelless	Low Pressure Distribution
5	110	83	110	165	124	165
10	120	90	120	180	135	180
15	132	99	132	198	149	198
20	146	110	146	218	164	218
25	158	119	158	237	178	237
30	174	131	164	260	195	255
35	191	143	170	286	215	260
40	209	157	176	314	236	264
45	229	172	185	344	258	279
50	251	188	193	376	282	293
55	275	206	206	412	309	309
60	302	227	217	452	339	325
65	331	248	228	496	372	342
70	363	272	240	544	408	359
75	398	299	251	596	447	375
80	437	328	262	656	492	394
85	479	359	273	718	539	409
90	525	394	284	786	590	424
95	575	489	288	862	733	431
100	631	536	316	946	804	473
105	692	588	346	1038	882	519
110	759	645	379	1138	967	569
115	832	707	416	1248	1061	624
120	912	775	456	1368	1163	684

J. Controlled blasting. When rock or rock outcroppings are encountered during construction of absorption trenches the rock may be removed by blasting in a sequential manner from the top to remove the rock. Percolation piping and sewer lines

shall be placed so that at least one foot of compacted clay soil lies beneath and on each side of the pipe where the pipe passes through the area blasted. The area blasted shall not be considered as part of the required absorption area.

K. Trenches receiving TL-2 effluent or TL-3 effluent are exempt from the increase in trench depth with slope and the soil cover requirements as found in 12VAC5-610-950 E. The following additional requirements shall apply.

1. Soil dispersal loading rates shall not exceed the values in Table 5.5.

2. The minimum vertical separation to a limiting feature shall be maintained under the entire infiltrative surface in accordance with 12VAC5-613-80.

3. The minimum soil cover, after settling, shall be six inches as measured from the finished ground surface to the uppermost limit of the dispersal media (or gravelless material) utilized in the absorption area. On sloping sites, cover shall be tied back into the existing slope to facilitate stabilization of the slope and maintenance of the site. The soil cover, with amendments as needed, shall be of a quality, character, and fertility suitable to establish a vegetative cover that is uniform and sufficiently mature to survive and inhibit erosion.

4. The minimum installation depth is equal to the sidewall of the dispersal system construction as described in 12VAC5-610-930 F (gravelless), 12VAC5-610-940, and subdivision E 1 of this section. On sloping sites, the minimum installation depth is measured on the downhill side of the absorption trench.

5. When trenches are installed at less than 12 inches from the ground surface, timed dosing shall be used to disperse the effluent.

6. For slopes up to 15% slope, there are not any soil texture group limitations for shallow placed trenches receiving TL-2 effluent or TL-3 effluent. For slopes over 15%, trench systems installed in Texture Group III and IV soils shall have a 12-inch or greater installation depth.

7. Designs supported by division-approved manufacturer design manuals may deviate from subdivisions K 4 and K 5 of this section.

8. Notwithstanding subdivisions K 1 through K 7 of this section, the minimum absorption area for a single-family residential dwelling receiving TL-2 effluent or TL-3 effluent shall be 400 square feet.

Table 5.5

Soil Absorption Area Loading Rates for Systems Receiving TL-2 Effluent or TL-3 Effluent

Percolation Rate (mpi)	TL-2 Effluent				TL-3 Effluent			
	Pressure Trench* Loading (gpd/ft^2)	Gravity Trench* Loading (gpd/ft^2)	Drip** Loading) (gpd/ft^2)	Pad/Mound Loading** (gpd/ft^2)	Pressure Trench* Loading (gpd/ft^2)	Gravity Trench* Loading (gpd/ft^2)	Drip** Loading (gpd/ft^2)	Pad/Mound Loading** (gpd/ft^2)
5	1.8	1.80	0.60	1.20	3.0	3.00	1.00	1.66
10	1.67	1.67	0.56	1.11	2.67	2.67	0.89	1.66
15	1.53	1.53	0.51	1.02	2.33	2.33	0.78	1.66
20	1.4	1.40	0.47	0.93	2.0	2.00	0.67	1.66
25	1.30	1.30	0.43	0.86	1.75	1.75	0.58	1.33
30	1.2	1.13	0.40	0.80	1.5	1.41	0.50	1.11
35	1.10	0.98	0.37	0.73	1.38	1.22	0.46	0.95
40	1.00	0.84	0.33	0.66	1.25	1.05	0.42	0.83
45	0.90	0.73	0.30	0.60	1.13	0.91	0.38	0.74
50	0.8	0.62	0.27	0.53	1.0	0.77	0.33	0.67
55	0.76	0.57	0.25	0.50	0.94	0.71	0.31	0.61
60	0.71	0.51	0.24	0.47	0.89	0.64	0.30	0.55
65	0.67	0.46	0.22	0.44	0.83	0.57	0.28	0.51
70	0.62	0.41	0.21	0.41	0.78	0.51	0.26	0.48
75	0.58	0.36	0.19	0.38	0.72	0.46	0.24	0.44

80	0.53	0.32	0.18	0.35	0.67	0.40	0.22	0.42
85	0.49	0.28	0.16	0.33	0.61	0.35	0.20	0.39
90	0.44	0.24	0.15	0.30	0.56	0.30	0.19	0.37
95	0.4	0.20	0.13	0.27	0.5	0.25	0.17	0.35
100	0.37	0.19	0.12	0.25	0.46	0.23	0.15	0.33
105	0.34	0.17	0.11	0.23	0.43	0.21	0.14	0.32
110	0.31	0.16	0.10	0.21	0.39	0.19	0.13	0.30
115	0.28	0.14	0.09	0.19	0.35	0.18	0.12	0.29
120	0.25	0.13	0.08	0.17	0.32	0.16	0.11	0.28

*Loading rates to trenches, whether gravity or pressure dosed, are based on the gallons per day of wastewater applied to the bottom of the trench.

**Loading rates to drip systems, pads, and mounds are based on the infiltrative surface area provided and are on an aerial basis.

12VAC5-610-955. Drip dispersal.

A. Drip dispersal applies wastewater in an even and controlled manner over an absorption area. Drip dispersal system components may include treatment components, a flow equalization pump tank, a filtration system, a flow measurement method, supply and return piping, small diameter pipe with emitters, air/vacuum release valves, redistribution control, and electromechanical components or controls.

B. Drip dispersal system tubing shall be color coded and certified by the manufacturer as designed and manufactured for the dispersal of wastewater. All drip dispersal system tubing shall be equipped with emitters approved for use with wastewater. For the application of septic tank effluent, the tubing must have self-cleaning emitters.

1. The minimum linear feet of tubing in the system shall be one-half of the minimum soil absorption area in square feet.

2. All tubing shall be placed on contour.

3. Except as provided by 12VAC5-613, drip systems dispersing septic tank effluent shall comply with the requirements of 12VAC5-610-594.

4. Drip systems dispersing secondary effluent or better require a minimum of six inches of cover over the tubing. Cover may be achieved by a combination of installation depth and Group II or Group III soil cover or other approved material over the drip field.

5. The discharge rate of any two emitters shall not vary by more than 10% in order to ensure that the effluent is uniformly distributed over the entire drip field or zone.

6. The emitters shall be evenly spaced along the length of the drip tubing at not less than six inches or more than 24 inches apart.

7. The system design shall protect the drip emitters and system from the effects of siphoning or backflow through the emitters.

C. Drip dispersal systems shall comply with the following minimum soil absorption area requirements:

1. For the dispersal of septic tank effluent, the minimum soil absorption area for a drip system shall be calculated by multiplying the trench bottom area required for a low pressure distribution system in Table 5.4 of 12VAC5-610-950 by three.

2. For the dispersal of ~~secondary or better~~ TL-2 effluent or TL-3 effluent, the minimum soil absorption area shall be ~~calculated by multiplying the trench bottom area for pressure distribution systems in accordance with subdivision 10 of 12VAC5-613-80 by three~~ in accordance with Table 5.5 of 12VAC5-610-950.

3. Air/vacuum release valves shall be located at the high points of the supply and return manifolds to each zone.

D. All drip dispersal systems shall be equipped with devices or methods to restrict effluent from draining by gravity to portions of a zone or laterals lower in elevation. Variable distribution due to gravity drainage shall be 10% or less within a zone.

E. A minimum of six hours of emergency storage above the high water alarm in the pump chamber shall be provided. The equalization volume shall be equal to 18 hours of storage. The equalization volume shall be measured from the pump off level to the high water alarm level. An audio/visual alarm meeting the requirements of 12VAC5-610-880 B 8 shall be provided for the pump chamber.

F. Each drip dispersal zone shall be time-dosed over a 24-hour period. The dose volume and interval shall be set to provide unsaturated flow conditions. Demand dosing is

prohibited. Minimum dose volume per zone shall be 3.5 times the liquid capacity of the drip laterals in the zone plus the liquid capacity of the supply and return manifold lines (which drain between doses) accounting for instantaneous loading and drain back.

1. At each dosing cycle, the system design shall only allow a full dose volume to be delivered.

2. For design flows greater than 1,000 gallons per day, a means to take each zone off line separately shall be provided. The system shall have the capability to bypass each zone that is taken out of service such that each subsequent dose is dispersed to the next available zone in sequence.

G. Filtration shall be provided to remove suspended solids and prevent clogging of emitters. The filtration design shall meet the drip tubing manufacturer's particle size requirements for protection of the emitters at a flow rate equal to or greater than the rate of forward flushing. Filter flush water shall be returned to the treatment system at a point where the residuals and volume of the flush water do not negatively impact the effluent quality or exceed the hydraulic design capacity of the treatment system.

H. A means for measuring or estimating total flow dispersed to the soil absorption area and to verify field dosing and field flushing rates shall be provided.

I. The system shall provide forward field flushing to achieve scouring velocity as specified by the drip tubing manufacturer. Field flushing shall occur on a routine schedule to prevent excessive solids accumulation and clogging. Flush water shall be returned to the treatment system at a point where the residuals and volume of the flush water do not negatively impact the effluent quality or exceed the hydraulic design capacity of the treatment system.

J. Electrical components shall be Underwriters Laboratory (UL) listed for the intended purpose. The designer shall provide a description with a schematic diagram of the electrical and control functions in the operation and maintenance manual. The electrical control equipment shall be mounted within a National Electrical Manufacturers Association (NEMA) 4X rated enclosure with a rigid latching door. All switches shall be clearly identified, and all internal wiring shall be factory installed. All wiring shall be installed according to applicable electrical safety codes and the manufacturer's installation schematic.

K. All components in a drip dispersal system shall be rated to withstand contact with wastewater and recommended for this application by the manufacturer. All components shall be protected from freezing.

L. The designer of the drip dispersal system shall verify the dosing rates, the flushing rates, and other parameters critical to the proper operation of the system at the startup inspection. A summary of the startup inspection shall be included in the operation and maintenance manual and shall include, at a minimum, the dosing volume, the forward flow flushing rate, the pressure head of the system, and verification of proper cycling between zones.

12VAC5-610-960. Elevated sand mound.

A. An elevated sand mound is a soil absorption system that incorporates low pressure distribution and sand filtration to produce treated sewage prior to absorption in the natural underlying soil. The elevated sand mound utilizes less gross soil area than most other soil absorption systems. Elevated sand mounds differ from pads in that elevated sand mounds are always an aboveground system, may receive septic tank effluent, and always require pressure distribution, and the infiltrative surface follows the natural ground surface and contour of the site.

B. ~~Mound systems are considered Type III systems (see 12VAC5-610-250 C).~~

~~C.~~ Mound systems receiving septic tank effluent shall be designed and constructed in accordance with the Wisconsin Mound Soil Absorption System Siting, Design and Construction Manual prepared by the Small Scale Waste Management Project, School of Natural Resources, College of Agricultural and Life Sciences, University of Wisconsin-Madison dated January ~~1990~~ 2000. Drip dispersal or low pressure distribution shall be used.

~~D.~~ C. The manual referred to in subsection ~~C~~ B of this section shall be used for the designated construction of elevated sand mounds. The following criteria are required for all elevated sand mound systems in addition to the requirements found in the manual.

~~1. The construction permit shall require permanent water saving devices; however, there shall be no corresponding reduction in the basal area. The construction permit shall be recorded and indexed in the grantor index under the holder's name in the land records of the clerk of the circuit court having jurisdiction over the site of the sewage disposal system pursuant to 12VAC5-610-250 J.~~

~~2.~~ 1. The proposed mound site shall be fenced, roped, or otherwise secured, and marked, to prevent damage by vehicular traffic. Activities on the mound site shall be severely limited in order to protect it to the greatest extent possible.

~~3. Formal plans and specifications, prepared by a licensed professional engineer in accordance with 12VAC5-610-250 G, shall be required and must be approved by the health department prior to any site disturbing activities.~~

~~4. The local health department shall be notified at least 48 hours before any work begins on the site, including delivery of materials.~~ 2. The mound must be constructed during dry weather and soil conditions. ~~The contractor shall schedule a conference with the local health department to review the~~

~~plans and specifications prior to beginning any phase of construction, including delivery of materials.~~

~~5.~~ 3. Wooded sites shall not be used unless it is shown by the applicant that the wooded site is the only site available, and if the applicant can demonstrate that the site can be properly prepared ~~(plowed)~~. If a wooded site is used, trees shall be removed by cutting them off at ground level, leaving the stumps in place. The cut trees shall be removed using methods that do not require driving equipment over the mound site and that do not result in the removal of any soil from the site. Larger basal areas may be required on wooded sites.

~~6.~~ 4. When the depth to a restriction, shrink-swell soils, or a water table is less than 24 inches, pretreatment sufficient to produce ~~a secondary~~ TL-2 effluent or TL-3 effluent may be used to reduce these distances ~~as shown in Table 4.4~~. in accordance with 12VAC5-613-80.

5. The minimum absorption area for single family residential dwellings shall be 400 square feet.

D. Elevated sand mounds receiving TL-2 effluent or TL-3 effluent shall adhere to the following additional design criteria.

1. The basal area (interface of fill sand and original soil surface) loading rate shall not exceed the values found in Table 5.5.

2. The minimum sand depth under the dispersal system is six inches.

3. The minimum soil cover, after settling, shall be six inches as measured from the finished ground surface to the uppermost limit of the dispersal media (or gravelless material) utilized in the absorption area. The finished sideslopes cannot exceed 1:4 (rise:run). The soil cover, with amendments as needed, shall be of a quality, character, and fertility suitable to establish a vegetative cover that is uniform and sufficiently mature to survive and inhibit erosion.

4. Vertical separation to limiting features as found in 12VAC5-613-80 shall be maintained under the entire infiltrative surface of the basal area.

5. Designs supported by division approved manufacturer design manuals may deviate from pressure dosing but require dosing to a gravity distribution system at a minimum.

12VAC5-610-966. Pads.

A. A pad is an absorption area wider than three feet but not longer than 100 feet with a level infiltrative surface where the bottom of the pad meets the original soil. The minimum standoff to a limiting feature in accordance with 12VAC5-613-80 is to be met under the entire infiltrative surface.

B. The minimum effluent quality dispersed to a pad is TL-2 effluent and pad bottom loading rates shall not exceed the values for pads noted in Table 5.5 of 12VAC5-610-950.

C. The longest dimension of the basal area of the pad, its length, shall be oriented parallel to the natural surface topographic contours. Minor deviations from surface contours are acceptable as long as the bottom of the pad is level (the entire bottom surface of the pad is at the same elevation, not to exceed 10% of the depth of the pad from the ground surface or plus or minus two inches, whichever is less), and intersects a similar soil horizon across its surface.

D. Pads and trenches may be used together in a single system when the respective pad or trench subsystems follow the respective design criteria found in this chapter and are separated by a minimum of six feet between the sidewall of the pad and the trench. When multiple pads are used on a site, the pads must be separated by the width of the pad as measured perpendicular to the natural surface topographic contour.

E. Pads shall be limited to sites with slopes of 10% or less (less than or equal to 10 feet of rise for every 100 feet of run).

F. All pads must be dosed. Pad systems over 1,000 gallons per day must be pressure dosed. When pads are installed at less than 12 inches from the ground surface, timed dosing shall be used to disperse the effluent.

G. The minimum absorption area for single family residential dwellings shall be 400 square feet.

H. Pad construction.

1. Gravel pads shall have a minimum installation depth of 12 inches, unless in Texture Group I or II soils where the installation depth can be reduced to eight inches. On sloping sites, the minimum installation depth is measured on the downhill side of the pad infiltrative surface. The construction of the pad's gravity percolation line and gravel bedding shall follow 12VAC5-610-930 E with the exception that the bottom of the pad is level and not sloping. Piping shall have a maximum center to center spacing of nine feet.

2. Gravel pads utilizing low pressure distribution shall follow 12VAC5-610-940 for construction and dosing cycle (volume). Gravel pads using low pressure distribution shall have a minimum installation depth of 12 inches, unless in Texture Group I or II soils where the installation depth can be reduced to eight inches. On sloping sites, the minimum installation depth is measured on the downhill side of the pad infiltrative surface. Piping shall have a maximum center to center spacing of nine feet.

3. Pads utilizing gravelless material as found in 12VAC5-610-930 F shall follow 12VAC5-610-930 F and manufacturer instructions on minimum depth of installation, but in no case shall a pad be installed at less than eight inches from the original soil surface. Gravelless material shall have a maximum center to center spacing of nine feet. On sloping

sites, the minimum installation depth is measured on the downhill side of the pad infiltrative surface.

4. Designs supported by a division approved manufacturer's design manual may deviate from the maximum slope, depth of installation, separation distance between pads, and timed dosing when the dispersal area is constructed in accordance with the approved manual.

I. The minimum soil cover, after settling, shall be six inches as measured from the finished ground surface to the uppermost limit of the dispersal media (or gravelless material) utilized in the absorption area. If the cover is mounded above grade, the finished sideslope cannot exceed 1:4 (rise:run). The soil cover, with amendments as needed, shall be of a quality, character, and fertility suitable to establish a vegetative cover that is uniform and sufficiently mature to survive and inhibit erosion.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-610)

Standard Methods for the Examination of Water and Wastewater, American Public Health Association, American Waterworks Association, Water Pollution Control Federation, 1992.

Methods for Determination of Inorganic Substances in Environmental Samples, United States Environmental Protection Agency, August 1993.

~~Wisconsin Mound Soil Absorption System Siting, Design and Construction Manual, College of Agricultural and Life Sciences, University of Wisconsin-Madison, January 1990.~~

Wisconsin Mound Soil Absorption System Siting, Design and Construction Manual, College of Agricultural and Life Sciences, University of Wisconsin-Madison, January 2000

Standard 41, Wastewater Recycle/Reuse and Water Conservation Devices, revised May 1983, NSF International.

VA.R. Doc. No. R23-6961; Filed September 20, 2022, 9:36 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-5, 12VAC30-60-140).**

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

The Governor has approved the request of the Department of Medical Assistance Services to extend the expiration date of the emergency regulation for 12VAC30-60 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through March 31, 2023. This extension is required for the Department of Medical Assistance Services to continue to enforcing Item 303 X 1 of Chapter 854 of 2019 Acts of Assembly, providing community mental health services in order to ensure appropriate utilization and cost efficiency and clarifying documentation requirements for service authorization for community mental health and rehabilitative services. The emergency regulation was published in 37:14 VA.R. 1549-1551 March 1, 2021.

Effective Date Extended Through: March 31, 2023.

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

VA.R. Doc. No. R21-5674; Filed September 21, 2022, 7:46 a.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Title of Regulation: **13VAC10-200. Rules and Regulations for the Allocation of Virginia Housing Opportunity Tax Credits (amending 13VAC10-200-30, 13VAC10-200-40).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Information:

October 14, 2022 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220

Public Comment Deadline: October 14, 2022.

Agency Contact: Fred W. Bryant, Chief Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5837, or email fred.bryant@vhda.com.

Summary:

The proposed amendments (i) provide that housing opportunity tax credit (HOTC) awards made in calendar year 2021 are legacy awards and are unchanged by the proposed 2022 amendments; (ii) for calendar years 2022 through 2025, provide for a HOTC program of up to $60 million per award year with a credit period of 10 years and specify how credits are allowed; (iii) allow the HOTC to be used in conjunction with both 9.0% and 4.0% federal low-income housing tax credits (LIHTC); (iv) permit an applicant having applied for 9.0% LIHTC, including applicants having been awarded 9.0% LIHTC, to amend its application from 9.0% LIHTC to 4.0% LIHTC in

connection with an HOTC application and, in so doing, to increase or decrease its requested LIHTC amount; (v) permit Virginia Housing Development Authority (VHDA) to reallocate any HOTCs that are recaptured, disallowed, terminated, or canceled and returned; (vi) permit VHDA to carry forward not greater than 15% of the amount of HOTC available in a year to a subsequent year; (vii) add a potential prioritization for 4.0% LIHTC developments that have not yet placed in service having equity funding gaps to make such developments feasible; (viii) provide an initial priority of one-third of HOTC ($20 million) for developments in areas with populations no greater than 35,000, with any remaining credits after such prioritization flowing statewide; and (ix) make other miscellaneous administrative clarification changes.

13VAC10-200-30. Availability and amount of HOTC.

A. Based upon the legislative intent of § 58.1-439.30 G of the Code of Virginia, notwithstanding any provisions of the enabling legislation inconsistent with § 58.1-439.30 G, the authority will award:

1. For calendar year 2021, up to $15 million of HOTC ~~each of the five calendar years beginning in calendar 2021 through calendar year 2025~~ for qualified projects. The credit period shall be one year. ~~The aggregate HOTC program shall equal up to $75 million. Any HOTC not used by taxpayer in a taxable year may be carried forward for the succeeding five years.~~

2. For calendar years 2022 through 2025, up to $60 million of HOTC for qualified projects for each of the four calendar years beginning in calendar years 2022 through 2025. The credit period shall be 10 years. The credit shall be allowed ratably for each qualified project, with one-tenth of the credit amount allowed annually for 10 years over the credit period, except that there shall be a reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26 USC § 42(f)(2), and any reduction by reason of 26 USC § 42(f)(2) in the credit allowable for the first taxable year of the credit period shall be allowable for the first taxable year following the credit period.

The aggregate HOTC program for calendar years 2021 through 2025 for qualified projects shall equal up to $255 million. Any HOTC not used by taxpayer in a taxable year may be carried forward by a qualified taxpayer for the succeeding five years. If a HOTC has been awarded prior to January 1, 2026, such credit may continue to be claimed on a return for taxable years on and after January 1, 2026, but only pursuant to its applicable credit period.

B. To qualify for the HOTC, the applicant must have applied for federal ~~9%~~ 9.0% LIHTC or federal 4.0% LIHTC, and have been (i) allocated LIHTC or (ii) allowed LIHTC (i.e., determined by the authority to be eligible for LIHTC but not allocated LIHTC). In the event of alternative clause (ii) of this subsection, the HOTC may be stand-alone (i.e., not allocated to the applicant in addition to LIHTC). An applicant having applied for 9.0% LIHTC (including applicants having been awarded 9.0% LIHTC) may elect to amend its application from 9.0% LIHTC to 4.0% LIHTC in connection with assignment of points and rankings for HOTC in accordance with 13VAC10-200-40. In so doing, the applicant may increase or decrease its requested federal credit amount.

C. While only LIHTC projects placed in service on or after January 1, 2021, may be eligible for HOTC, not every development receiving LIHTC and placing in service on or after January 1, 2021, will receive HOTC. Rankings and awards of HOTC to qualified projects shall be in accordance with 13VAC10-200-40.

D. The HOTC for each qualified project may be (i) up to the amount of the federal LIHTC allocated or allowed for the qualified project or (ii) a percentage of the federal LIHTC allocated or allowed for the qualified project as determined by the authority, based upon the availability of HOTC as compared to the federal LIHTC allocated or allowed for the qualified projects or such other factors the executive director deems appropriate for good cause to promote the goals and interests of the Commonwealth in the HOTC program.

E. The authority may pre-allocate future years' HOTC, but such credits cannot be claimed until the calendar year designated by the authority. Subject to the requirement that the total amount of tax credits authorized under this chapter shall not exceed $15 million ~~per~~ for calendar year 2021, and $60 million per year for calendar years 2022 through 2025, the authority may re-allocate, in the following calendar year, but no later than December 31, 2025, any HOTC that are recaptured, disallowed, terminated, or canceled and returned to the authority.

F. If the amount of HOTC authorized in a calendar year for qualified projects is less than the total amount of credits available for qualified projects, the balance of such credits, in an amount not greater than 15% of the amount of credits available (i) shall be allocated by the authority for any qualified project in the following calendar year, (ii) shall not be allocated at any time after such following calendar year, and (iii) shall be allocated no later than December 31, 2025.

13VAC10-200-40. Applications, ranking of applications and award of HOTC.

A. Application for a reservation of credits shall be commenced by filing with the authority an application, on such forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with this chapter and to make the reservation and allocation of the credits in accordance with this chapter.

B. For purposes of subsection A of this section, the authority may utilize the application submitted for LIHTC, alone or with

an HOTC addendum, or may require an entirely new HOTC application be submitted.

C. The executive director may:

1. Reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

2. Prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as deemed necessary or desirable to allow sufficient processing time for the Authority to make such reservations and allocations.

3. Divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors:

a. Geographical areas of the state;

b. Types or characteristics of housing;

c. Construction;

d. Financing;

e. Owners;

f. Occupants;

g. Source of credits; or

h. Any other factors deemed appropriate by the executive director to best meet the housing needs of the Commonwealth.

D. The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with Rules and Regulations for Multi-Family Housing Developments (13VAC10-20).

E. The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. According to points assigned pursuant to 13VAC10-180, Rules and Regulations for Allocation of Low-Income Housing Tax Credits; or

2. Such other methodology for assigning points as determined by the executive director to promote the goals and interests of the Commonwealth in the HOTC program. Such methodology may include prioritizing one or more of the following:

a. Unfunded developments in the At-Large pools of the ~~9%~~ 9.0% LIHTC competition, in order to produce more LIHTC units in Virginia;

b. Unfunded developments in the Local Housing Authority pool of the ~~9%~~ 9.0% LIHTC competition or other developments that are a part of a local housing authority's public housing revitalization efforts;

c. ~~9%~~ 9.0% LIHTC and 4.0% LIHTC developments that have not yet placed in service having equity funding gaps, in order to make such developments feasible;

d. Developments that preserve existing affordable housing;

e. Developments with rents and income limits that are more deeply targeted than required by the LIHTC program;

f. Developments in high-opportunity areas; or

g. Developments providing enhanced tenant services, as defined by the Authority.

3. Of the $60 million of HOTC authorized per calendar years 2022 through 2025, $20 million of such credits shall be first allocated exclusively for qualified projects located in a locality with a population no greater than 35,000 as determined by the most recent United States census (priority developments). Such allocation of HOTC shall constitute the minimum amount of such tax credits to be allocated for priority developments. However, if the amount of such tax credits requested for priority developments is less than the total amount of such credits available for priority developments, the balance of such credits shall be allocated for any qualified project, regardless of location. In allocating or allowing such credits to priority developments, the authority shall give equal consideration to qualified 9.0% LIHTC and 4.0% LIHTC projects.

The executive director may exclude and disregard any application that the executive director determines is not submitted in good faith or would not be financially feasible.

F. Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. Applications with the highest rankings shall receive allocations up to the allowable amount, determined by the executive director pursuant to 13VAC10-200-30, prior to any allocations to lower ranking applicants.

In the event of a tie in the number of points assigned to two or more projects, the executive director shall select one or more of such applications by lot for an award of credits.

G. Within a reasonable time after credits are reserved to any applicant applications, the executive director shall notify each applicant for such reservations of credits either:

1. Of the amount of credits reserved to such applicant's application by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein and by this chapter, or

2. That the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance with this chapter.

H. The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the binding commitment issued or to be issued to the applicant and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall notify the applicant of the board's determination.

I. The authority shall provide the Department of Taxation with copies of HOTC award letters and eligibility certificates, or summary reports of the HOTC award letters and eligibility certificates no less than annually.

J. In the event the Authority terminates an applicant's award of LIHTC pursuant to 13VAC10-180-60 or the applicant enters into a cancellation agreement with the Authority for such award, the award of HOTC shall also immediately terminate or be canceled, as applicable, and the Authority will notify the Department of Taxation accordingly.

VA.R. Doc. No. R23-7343; Filed September 21, 2022, 7:05 a.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **14VAC5-405. Rules Governing Balance Billing for Out-of-Network Health Care Services.**

Agency Contact: Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, or email jackie.myers@scc.virginia.gov.

FORMS (14VAC5-405)

~~Notice of Consumer Rights, Form 405-A (eff. 1/2021)~~

Notice of Consumer Rights, Form 405-A (rev. 9/2022)

Elective Group Health Plan Opt-In, Form 405-B (rev. 3/2021)

Elective Group Health Plan Change/Termination, Form 405-C (rev. 3/2021)

~~Notice of Intent to Arbitrate, Form 405-D (rev. 3/2021)~~

Notice of Intent to Arbitrate, Form 405-D (rev. 9/2022)

Arbitrator Application, Form 405-E (rev. 3/2021)

VA.R. Doc. No. R23-7366; Filed September 16, 2022, 5:03 a.m.

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TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Notice of Extension of Emergency Regulation

Title of Regulation: **16VAC15-60. Regulation Governing On-The-Job Training Programs or Other Training Programs (adding 16VAC15-60-10).**

Statutory Authority: §§ 40.1-6 and 40.1-28.10 of the Code of Virginia.

The Governor has approved the request of the Department of Labor and Industry to extend the expiration date of the emergency regulation for 16VAC15-60 for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation is continued in effect through April 29, 2023. This extension is required for the Department of Labor and Industry to continue to make employer on-the-job training programs or other training programs established in accordance with the requirements of § 40.1-28.10 of the Code of Virginia available to businesses that want to use these programs and can continue to do so until the permanent regulation can take effect. The emergency regulation was published in 37:19 VA.R. 2842-2843 May 10, 2021.

Effective Date Extended Through: April 29, 2023.

Agency Contact: Cristin Bernhardt, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-2392, or email cristin.bernhardt@doli.virginia.gov.

VA.R. Doc. No. R21-6714; Filed September 21, 2022, 7:45 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Fast-Track Regulation

Titles of Regulations: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-270).**

18VAC41-70. Esthetics Regulations (amending 18VAC41-70-270).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 9, 2022.

Effective Date: December 1, 2022.

Agency Contact: Stephen Kirschner, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Basis: Section 54.1-201.5 of the Code of Virginia gives authority to the Board for Barbers and Cosmetology to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system.

Purpose: The purpose of this action is to amend the regulations so businesses do not have to maintain a restroom exclusively for their clients' use. Currently, these businesses must maintain a bathroom on premises that is not shared by other businesses. The current rule was intended to ensure the salon patron does not have to exit the facility during a service or use facilities that are not maintained properly because the salon does not exercise control over such facilities. However, salons and schools have complained that the requirement is onerous, often requiring thousands of dollars of renovations to add bathrooms to prospective facilities. The board determined facilities that operate a salon, shop, spa, or school can maintain a restroom exclusively for their clients' use or share a bathroom with other businesses providing (i) the business licensee can maintain the sanitation of the restroom and (ii) the bathroom is within 200 feet to the establishment entrance. As a result of the proposed amendment, small businesses that serve clients as a salon, shop, spa, or school will be able to use existing shared bathroom facilities. This should substantially reduce the financial burden on businesses, particularly those that lease office space or utilize a salon suite model. The 200 feet requirement should reduce, though not eliminate, the risk to clients of leaving the controlled salon environment. The requirement of the salon to comply with sanitation regulations should enable the salon and protect client safety in that regard.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because it is reducing a regulatory burden for licensees without disrupting the protection of the health, safety, and welfare of the public.

Substance: The proposed amendments change the restroom requirement from maintained exclusively for client use to the bathroom shall be available exclusively for client use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use and within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter.

Issues: The advantage of the regulatory change for the public is that it allows salons, shops, spas, and schools to share a restroom with other businesses if (i) the facility licensee can maintain the sanitation of the bathroom and (ii) the restroom is within 200 feet of the entrance. Businesses often lease space prior to understanding the board's requirement and encounter costly renovation or build out expenses to comply with the regulations. Businesses have reported expenses in the $5,000 to $15,000 range. The amendments reduce economic burden on facilities while maintaining reasonable safety protections by ensuring the bathrooms comply with sanitation regulations.

The disadvantage to the public is that clients may have to share facilities with other businesses' employees and consumers; nevertheless, the regulations are designed to mitigate health risks by requiring the bathroom meet all the sanitation requirements in the regulations. Additionally, clients may travel further from the salon facility than currently allowed, potentially subjecting them to higher risks if leaving mid-service (with chemicals in their hair, for example).

There are no advantages or disadvantages to the agency or commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Board for Barbering and Cosmetology (Board) proposes to revise its current requirement that salons, shops, spas, and schools maintain a separate bathroom exclusively for clients by allowing these facilities to share a bathroom with other businesses under certain conditions.

Background. This action results in part from a petition that esthetics facilities be allowed to use bathroom space that is not exclusively available to clients, as long as the bathroom is geographically close to the facility.[2] The regulations for esthetics facilities as well as facilities for barbers, cosmetologists, nail technicians, and wax technicians currently state that, "For facilities newly occupied after January 1, 2017,

the bathroom shall be maintained exclusively for clients' use."[3] Subsequently, the Board decided to amend 18VAC41-70, Esthetics Regulations, and 18VAC41-20, Barbering and Cosmetology Regulations, so that facilities would also be allowed to use a bathroom shared with other businesses in the same building as long as it is within 200 feet of the entrance and adheres to all sanitation standards in the regulation.[4]

The Department of Professional and Occupational Regulation (DPOR) explained that the current requirement of an exclusive bathroom was added due to two related concerns that arise in shopping mall settings: first, that clients may leave the salon with chemicals in their hair to access a bathroom, causing the cosmetologist to lose control of the service for extended periods of time; and second, that salons may not be able to ensure that sanitation and safety requirements are met if the bathroom is shared by multiple businesses. DPOR staff selected the 200 feet limit to provide a "reasonable, but specific alternative" to the language used in the petition for rulemaking ("geographically close") so as to mitigate concerns about clients going too far with chemicals in their hair. DPOR explained that the proposed change is a compromise as the Board attempts to balance the economic cost against the safety benefits of the current rule.

Estimated Benefits and Costs. The proposed amendments would benefit individuals seeking to open new salons, shops, spas, or schools by providing greater flexibility regarding the sites they might consider. Existing salons, shops, spas, schools that have opened since January 1, 2017, and incurred any additional cost of maintaining an exclusive bathroom for their clients may also benefit from having additional options if they decide to relocate their business. DPOR reports that facilities often lease space prior to understanding the Board's requirements and have reported expenses of approximately $5,000 to $15,000 arising from renovations necessary to comply with the regulatory requirement.[5] Further, DPOR issued an average of 934 new facility licenses between 2017 and 2021,[6] thus the potential exists for a substantial amount of cost avoidance in the future depending on the number of facilities that undertake renovations.

Businesses and Other Entities Affected. The proposed amendments primarily benefit new shops, salons, spas, and schools that are looking at potential locations and have yet to sign a lease or undertake any renovations to add a bathroom to their facility. DPOR reports that there are currently 8,000 licensed facilities that fall under the barber-cosmetology and esthetics regulations.[7] Of these, 4,891 facilities have been newly licensed since the current bathroom requirement went into effect in 2017.[8] They would be particularly affected by the proposed amendments to the extent that they might save money by relocating to a site with a shared bathroom, if they choose to do so.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[9] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed amendments would make the regulatory requirements more flexible and is likely to generate significant cost savings for businesses. Thus, an adverse impact is not indicated.

Small Businesses[10] Affected.[11] DPOR reports that nearly all of the 8,000 licensed facilities are small businesses.[12] As stated, the proposed amendments would benefit regulants, including small businesses. A reduction to the cost of required renovations could also contribute to increased entry in these industries and more facilities opening.

Localities[13] Affected.[14] The proposed amendments would neither affect any locality in particular nor would they introduce costs for local governments. Consequently, an adverse economic impact is not indicated for localities.

Projected Impact on Employment. The proposed amendments would not affect employment directly. The proposed amendments may indirectly increase employment by shops, salons, spas, and schools if, for example, not having to add a bathroom (or repurposing an existing bathroom) allows those businesses to add a chair for an additional professional to provide services. Increased entry into the industry by new facilities could also have a modest impact on increasing employment.

Effects on the Use and Value of Private Property. Lowering the costs of opening new barber, cosmetology, and esthetics facilities would increase the value of those businesses. The proposed amendments would reduce renovation costs for new facilities, but do not affect real estate development costs in general.

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

[2]See https://townhall.virginia.gov/L/ViewPetition.cfm?petitionId=355. The Board rejected the petition as written because it excluded barbers, cosmetologists, nail technicians, and wax technicians.

[3]Identical language appears in 18VAC41-20-270 Sanitation and safety standards for shops, salons, and schools of both chapters. The word "exclusively" here is intended to distinguish between bathrooms used only by the facility as opposed to bathrooms that might be shared with other businesses, not to exclude use by the facility's staff.

[4]See the minutes of the Board's March 14, 2022 meeting: https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\134\32617\Minutes_DPOR_32617_v2.pdf. The Board amended the proposed language at its July 11, 2022 meeting based on DPB recommendations to increase clarity.

[5]See Agency Background Document (ABD) page 4: https://townhall.virginia.gov/l/GetFile.cfm?File=134\5963\9638\AgencyStatement_DPOR_9638_v2.pdf.

[6]Data provided by DPOR to DPB via email dated June 23, 2022.

[7]DPOR reports that as of April 1, 2022, there are 884 barber shops, 73 barber schools, 5,086 cosmetology salons, 158 cosmetology schools, 57 esthetics schools, 824 esthetics spas, 715 nail salons, 43 nail technician schools, 144 waxing salons, and 16 waxing schools. See ABD, page 7.

[8]DPOR email to DPB dated June 23, 2022.

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

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

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

[12]ABD, page 7.

[13]"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.

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

Agency's Response to Economic Impact Analysis: The Board for Barbers and Cosmetology concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The amendments add an exception to the requirement that salons, shops, spas, and schools maintain a separate bathroom exclusively for client use and allows such facilities to either (i) maintain a separate bathroom exclusively for client use or (ii) share a bathroom with other businesses that clients are permitted to use if the bathroom is located within 200 feet of the entrance and otherwise meets all the sanitation requirements in the regulations.

18VAC41-20-270. Sanitation and safety standards for shops, salons, and schools.

A. Sanitation and safety standards. Any shop, salon, school, or facility where barber, master barber, cosmetology, or nail or waxing services are delivered to the public must be clean and sanitary at all times. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be an Environmental Protection Agency (EPA) registered disinfectant that is bactericidal, virucidal, and fungicidal. Disinfectant solutions shall be used according to manufacturer's directions.

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic that the manufacturer designed for use on more than one client, including clippers, scissors, combs, and nippers is to be carried out in the following manner prior to servicing a client:

a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;

b. Wash thoroughly with hot water and soap;

c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;

d. Fully immerse implements into solution for a minimum of 10 minutes; and

e. After immersion, rinse articles, dry thoroughly with a clean paper towel, and store in a clean, predisinfected, and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable clippers may be stored in an area other than in a closed cabinet or container. This area shall be clean and the cutting edges of any clippers are to be disinfected.

5. Electrical clipper blades shall be disinfected before and after each use. If the clipper blade cannot be removed, the use of a spray or foam used according to the manufacturer's instructions will be acceptable, provided that the disinfectant is an EPA-registered disinfectant that is bactericidal,

virucidal, and fungicidal, and that the entire handle is also disinfected by wiping with the disinfectant solution.

6. All wax pots shall be cleaned and disinfected with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal and with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

7. Each barber, master barber, cosmetologist, nail technician, and wax technician must have a wet disinfection unit at his station.

8. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipeless units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

a. Drain all water and remove all debris;

b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residue and then rinse with water;

c. Disinfect by spraying or wiping the surface with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal; and

d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. Service chairs, wash basins, shampoo sinks, workstations and workstands, and back bars shall be clean;

2. The floor surface in all work areas must be of a washable surface other than carpet. The floor must be kept clean and free of hair, nail clippings, dropped articles, spills, clutter, trash, electrical cords, other waste materials, and any other items that may pose a hazard;

3. All furniture, fixtures, walls, floors, windows, and ceilings shall be clean and in good repair and free of water seepage and dirt. Any mats shall be secured or shall lie flat;

4. A fully functional bathroom in the same building with a working toilet and sink must be available for clients. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. If there is a window, it must have a screen. There must be antibacterial soap and clean single-use towels or hand air-drying device for the client's use. Laundering of towels is allowed, space permitting. The bathroom must not be used as a work area or for the open storage of chemicals. For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for client use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use and within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee, and electrical outlets shall be covered by plates;

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The salon area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and

9. Adequate lighting shall be provided.

D. Articles, tools, and products.

1. Clean towels, robes, or other linens shall be used for each patron. Clean towels, robes, or other linens shall be stored in a clean, predisinfected, and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;

2. Whenever a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin;

3. Soiled implements must be removed from the tops of work stations immediately after use;

4. Lotions, ointments, creams, and powders shall be labeled and kept in closed containers. A clean spatula, other clean tools, or clean disposable gloves shall be used to remove bulk substances such as creams or ointments from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be covered after each use;

5. For nail care, if a sanitary container is provided for a client, the sanitary container shall be labeled and implements shall be used solely for that specific client. Disinfection shall be carried out in accordance with subdivisions B 1 and B 2 of this section;

6. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

7. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the shop, salon, school, or facility in accordance with the guidelines of the Virginia Department of Health.

E. Chemical storage and emergency information.

1. Shops, salons, schools, and facilities shall have in the immediate working area a binder with all Safety Data Sheets (SDS) provided by manufacturers for any chemical products used;

2. Shop, salons, schools, and facilities shall have a blood spill clean-up kit in the work area that contains at minimum latex gloves, two 12-inch by 12-inch towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any Occupational Safety and Health Administration (OSHA) approved blood spill clean-up kit;

3. Flammable chemicals shall be labeled and stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (e.g., oxidizers, catalysts, and solvents) shall be labeled and separated in storage.

F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client. Licensees shall require that clients for nail care services shall cleanse their hands immediately prior to the requested nail care service;

2. An artificial nail shall only be applied to a healthy natural nail;

3. A nail drill or motorized instrument shall be used only on the free edge of the nail;

4. No shop, salon, school, or facility providing cosmetology or nail care services shall have on the premises cosmetic products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products;

5. No product shall be used in a manner that is disapproved by the FDA; and

6. All regulated services must be performed in a facility that is in compliance with current local building and zoning codes.

G. In addition to any requirements set forth in this section, all licensees and temporary permit holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational Safety and Health Compliance Division of the Virginia Department of Labor and Industry.

H. All shops, salons, schools, and facilities shall immediately report the results of any inspection of the shop, salon, or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All shops, salons, schools, and facilities shall maintain a self-inspection form on file to be updated on an annual basis, and kept for five years, so that it may be requested and reviewed by the board at its discretion.

18VAC41-70-270. Sanitation and safety standards for spas and schools.

A. Sanitation and safety standards.

1. Any spa or school where esthetics services are delivered to the public must be clean and sanitary at all times.

2. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.

3. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be a U.S. Environmental Protection Agency (EPA) registered disinfectant that is bactericidal, virucidal, and fungicidal. Disinfectant solutions shall be used according to manufacturer's directions.

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic, that the manufacturer designed for use on more than one client, is to be carried out in the following manner prior to servicing a client:

a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;

b. Wash thoroughly with hot water and soap;

c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;

d. Fully immerse implements into solution for a minimum of 10 minutes; and

e. After immersion, rinse articles, dry thoroughly with a clean paper towel, and store in a clean, predisinfected, and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care

implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable tools or implements may be stored in an area other than in a closed cabinet or container. This area shall be clean.

5. All materials including cosmetic and nail brushes, sponges, chamois, spatulas, and galvanic electrodes must be cleaned with warm water and soap or detergent to remove all foreign matter. Implements should then be rinsed, thoroughly dried with a clean paper towel, and completely immersed in an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly, and stored in a predisinfected and dry drawer, cabinet, or nonairtight covered container, or left in an EPA-registered disinfection storage solution used according to manufacturer's directions.

6. All wax pots shall be cleaned and disinfected with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

7. Each esthetician must have a wet disinfection unit at his station.

8. Nail brushes; nippers; finger bowls; disinfectable or washable buffers; disinfectable or washable files, which must also be scrubbed with a brush to remove all foreign matter; and other instruments must be washed in soap and water, rinsed, dried thoroughly with a clean paper towel, and then completely immersed in an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal for 10 minutes after each use. After disinfection they must be rinsed, dried thoroughly with a clean paper towel, and placed in a dry, predisinfected, nonairtight covered receptacle, cabinet, or drawer, or left in an EPA-registered disinfectant storage system used according to manufacturer's directions.

9. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipeless units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

a. Drain all water and remove all debris;

b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residues and then rinse with water;

c. Disinfect by spraying or wiping the surface with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal; and

d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. Service chairs, workstations and workstands, and back bars shall be clean;

2. The floor surface in all work areas must be of a washable surface other than carpet. The floor must be kept clean and free of debris, nail clippings, dropped articles, spills, clutter, trash, electrical cords, other waste materials, and other items that may pose a hazard;

3. All furniture, fixtures, walls, floors, windows, and ceilings shall be in good repair and free of water seepage and dirt. All mats shall be secured or shall lie flat;

4. A fully functional bathroom with a working toilet and sink must be available for clients. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. There must be antibacterial soap and clean single-use towels or hand air-drying device for the client's use. For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for client use or shared with other businesses in the same building. If the bathroom is shared, the bathroom shall be available for client use and within 200 feet of the entrance and must adhere to all sanitation requirements of this chapter;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee and electrical outlets shall be covered by plates;

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The spa area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals and to allow the free flow of air; and

9. Adequate lighting shall be provided.

D. Articles, tools, and products.

1. Any multiuse article, tool, or product that cannot be cleansed or disinfected is prohibited from use;

2. Soiled implements must be removed from the tops of work stations immediately after use;

3. Clean spatulas, other clean tools, or clean disposable gloves shall be used to remove bulk substances from containers;

4. Lotions, ointments, creams, and powders shall be labeled and kept in closed containers. A clean spatula shall be used to remove creams or other products from jars. Sterile cotton

or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be covered after each use;

5. All appliances shall be safely stored;

6. Presanitized tools and implements, linens, and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;

7. Clean towels, robes, or other linens shall be used for each patron. Clean towels, robes, or other linens shall be stored in a clean predisinfected and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;

8. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

9. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the spa or school in accordance with the guidelines of the Virginia Department of Health and OSHA (Occupational Safety and Health Administration).

E. Chemical storage and emergency information.

1. Spas and schools shall have in the immediate working area a binder with all Safety Data Sheets (SDS) provided by manufacturers for any chemical products used;

2. Spas and schools shall have a blood spill clean-up kit in the work area that contains at a minimum latex gloves, two 12-inch by 12-inch towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any OSHA-approved blood spill clean-up kit;

3. Flammable chemicals shall be labeled and stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (e.g., oxidizers, catalysts, and solvents) shall be labeled and separated in storage.

F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client;

2. All employees providing client services shall wear gloves while providing services when exposure to bloodborne pathogens is possible;

3. No spa or school providing esthetics services shall have on the premises esthetics products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in esthetics products;

4. No product shall be used in a manner that is disapproved by the FDA; and

5. Esthetics spas must be in compliance with current building and zoning codes.

G. In addition to the requirements set forth in this section, all licensees and temporary license holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry.

H. All spas and schools shall immediately report the results of any inspection of the spa or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All spas and schools shall conduct a self-inspection on an annual basis and maintain a self-inspection form on file for five years so that it may be requested and reviewed by the board at its discretion.

VA.R. Doc. No. R23-7242; Filed September 19, 2022, 7:20 p.m.

Fast-Track Regulation

Titles of Regulations: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-270).**

18VAC41-70. Esthetics Regulations (amending 18VAC41-70-270).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 9, 2022.

Effective Date: December 1, 2022.

Agency Contact: Stephen Kirschner, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia gives authority to the Board for Barbers and Cosmetology to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

Purpose: The purpose of this action is to amend the regulations such that the current "antibacterial" criteria are no longer in place. Antibacterial soap is required for client and employee use under the current regulations. The antibacterial requirement was intended to safeguard licensed professionals and clients from infection. However, the federal Food and Drug Administration (FDA) found there is little evidence that antibacterial cleansers are an improvement over non-antibacterial soaps at preventing diseases and infections.

The regulatory change allows licensed professionals, salons, shops, and schools the ability to utilize non-antibacterial soap.

The existing regulations' antibacterial soap provision is unnecessary. There is no evidence that using antibacterial products is beneficial. After considering the facts, the board determined that antibacterial products offer no more protection against infections than soap and water. The amendments remove all references to "antibacterial" soap requirements in the regulation.

Rationale for Using Fast-Track Rulemaking Process: This rulemaking is expected to be noncontroversial because it is reducing a regulatory burden for licensees without disrupting the protection of the health, safety, and welfare of the public.

Substance: The proposed amendments remove the antibacterial soap requirement for client and employee usage to soap.

Issues: The primary advantage of this amendment to the public is that it ensures the regulations and FDA findings on antibacterial soaps are consistent. Antibacterial cleansers ingredients, according to studies, may increase microorganisms resistant to antibiotics. The FDA halted the marketing of items containing certain antibacterial ingredients as a result of the findings in this study. Because the FDA views antibacterial soap as no more effective than regular soap, and possibly more harmful by increasing antibiotic resistant bacteria, there is no clear need for this requirement. This change reduces an unnecessary burden. There are no disadvantages to the public. There are no advantages or disadvantages to the agency or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. In both 18VAC41-20, Barbering and Cosmetology Regulations, and 18VAC41-70, Esthetics Regulations, the Board for Barbers and Cosmetology (Board) proposes to eliminate the requirement that the soap provided for clients and employees be antibacterial.

Background. The current Barbering and Cosmetology Regulations require that any shop, salon, school, or facility where barber, master barber, cosmetology, or nail or waxing services are delivered to the public must have a fully functional bathroom with a working toilet and sink that are available for clients. Among other requirements, there must be antibacterial soap and clean single-use towels or a hand air-drying device for the client's use. The Esthetics Regulations have the same requirements for any spa or school where esthetics services are delivered. The Board proposes to eliminate the requirement that the soap be of the antibacterial variety in both regulations.

Both the Barbering and Cosmetology Regulations and the Esthetics Regulations currently require that all employees providing client services cleanse their hands with an antibacterial soap product prior to providing services to each client. Again, the Board proposes to eliminate the requirement that the soap be of the antibacterial variety in each regulation.

Estimated Benefits and Costs. According to the U.S. Food and Drug Administration (FDA), antibacterial soaps have not been shown to be more effective than plain soap and water in preventing illnesses.[2] Additionally, the FDA states that it is not known if the active ingredients in antibacterial soaps are safe for daily use over a long period of time.[3] Also, some people are allergic to triclosan, a common active ingredient in antibacterial soap.[4] Triclosan has also been found to impair the contraction of both cardiac and skeletal muscle.[5] Based upon searches for the least expensive antibacterial soap and least expensive regular soap on Amazon.com,[6] it appears that antibacterial soap is slightly more expensive ($0.10 per fluid ounce versus $0.09 per fluid ounce). Thus, eliminating the requirement that the soap provided for clients and employees be antibacterial would be beneficial for reasons of health and cost.

Businesses and Other Entities Affected. The proposed amendments affect the 875 barber shops, 72 barber schools, 5,018 cosmetology salons, 160 cosmetology schools, 54 esthetics schools, 823 esthetics spas, 703 nail salons, 43 nail technician schools, 146 waxing salons, and 16 waxing schools licensed in the Commonwealth, as well as their employees, clients, and students.[7]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[8] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. No adverse impact is indicated for the proposed removal of the requirement that the soap provided for clients and employees be antibacterial.

Small Businesses[9] Affected.[10] The proposed amendments do not adversely affect small businesses.

Localities[11] Affected.[12] The proposed amendments neither disproportionately affect particular localities, nor introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed removal of the requirement that the soap provided for clients and employees be antibacterial may, as described, modestly reduce costs for barber shops, barber schools, cosmetology salons, cosmetology schools, esthetics schools, esthetics spas, nail salons, nail technician schools, waxing salons, and waxing schools. The value of these businesses and schools that are private may thus commensurately increase. The proposed amendments do not affect real estate development costs.

[1] § 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected

number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://www.fda.gov/consumers/consumer-updates/antibacterial-soap-you-can-skip-it-use-plain-soap-and-water.

[3]Ibid.

[4]See https://www.contactdermatitisinstitute.com/pdfs/allergens/Triclosan.pdf and https://www.fda.gov/consumers/consumer-updates/antibacterial-soap-you-can-skip-it-use-plain-soap-and-water.

[5]See https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3435154/

[6]The search was conducted on July 11, 2022.

[7]Data source: Department of Professional and Occupational Regulation

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

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

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

[11]"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.

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

Agency Response to Economic Impact Analysis: The Board for Barbers and Cosmetology concurs with the approval prepared by the Department of Planning and Budget.

Summary:

The amendments eliminate the antibacterial requirement for soap used (i) by clients and (ii) by employees to cleanse their hands prior to providing services to each client.

18VAC41-20-270. Sanitation and safety standards for shops, salons, and schools.

A. Sanitation and safety standards. Any shop, salon, school, or facility where barber, master barber, cosmetology, or nail or waxing services are delivered to the public must be clean and sanitary at all times. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be an Environmental Protection Agency (EPA) registered disinfectant that is bactericidal, virucidal, and fungicidal. Disinfectant solutions shall be used according to manufacturer's directions.

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic that the manufacturer designed for use on more than one client, including clippers, scissors, combs, and nippers is to be carried out in the following manner prior to servicing a client:

a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;

b. Wash thoroughly with hot water and soap;

c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;

d. Fully immerse implements into solution for a minimum of 10 minutes; and

e. After immersion, rinse articles, dry thoroughly with a clean paper towel, and store in a clean, predisinfected, and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable clippers may be stored in an area other than in a closed cabinet or container. This area shall be clean and the cutting edges of any clippers are to be disinfected.

5. Electrical clipper blades shall be disinfected before and after each use. If the clipper blade cannot be removed, the use of a spray or foam used according to the manufacturer's instructions will be acceptable, provided that the disinfectant

is an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal, and that the entire handle is also disinfected by wiping with the disinfectant solution.

6. All wax pots shall be cleaned and disinfected with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal and with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

7. Each barber, master barber, cosmetologist, nail technician, and wax technician must have a wet disinfection unit at his station.

8. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipeless units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

a. Drain all water and remove all debris;

b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residue and then rinse with water;

c. Disinfect by spraying or wiping the surface with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal; and

d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. Service chairs, wash basins, shampoo sinks, workstations and workstands, and back bars shall be clean;

2. The floor surface in all work areas must be of a washable surface other than carpet. The floor must be kept clean and free of hair, nail clippings, dropped articles, spills, clutter, trash, electrical cords, other waste materials, and any other items that may pose a hazard;

3. All furniture, fixtures, walls, floors, windows, and ceilings shall be clean and in good repair and free of water seepage and dirt. Any mats shall be secured or shall lie flat;

4. A fully functional bathroom in the same building with a working toilet and sink must be available for clients. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. If there is a window, it must have a screen. There must be ~~antibacterial~~ soap and clean single-use towels or hand air-drying device for the client's use. Laundering of towels is allowed, space permitting. The bathroom must not be used as a work area or for the open storage of chemicals. For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for client use;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee, and electrical outlets shall be covered by plates;

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The salon area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and

9. Adequate lighting shall be provided.

D. Articles, tools, and products.

1. Clean towels, robes, or other linens shall be used for each patron. Clean towels, robes, or other linens shall be stored in a clean, predisinfected, and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;

2. Whenever a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin;

3. Soiled implements must be removed from the tops of work stations immediately after use;

4. Lotions, ointments, creams, and powders shall be labeled and kept in closed containers. A clean spatula, other clean tools, or clean disposable gloves shall be used to remove bulk substances such as creams or ointments from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be covered after each use;

5. For nail care, if a sanitary container is provided for a client, the sanitary container shall be labeled and implements shall be used solely for that specific client. Disinfection shall be carried out in accordance with subdivisions B 1 and B 2 of this section;

6. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

7. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the shop, salon, school, or facility in accordance with the guidelines of the Virginia Department of Health.

E. Chemical storage and emergency information.

1. Shops, salons, schools, and facilities shall have in the immediate working area a binder with all Safety Data Sheets

(SDS) provided by manufacturers for any chemical products used;

2. Shop, salons, schools, and facilities shall have a blood spill clean-up kit in the work area that contains at minimum latex gloves, two 12-inch by 12-inch towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any Occupational Safety and Health Administration (OSHA) approved blood spill clean-up kit;

3. Flammable chemicals shall be labeled and stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (e.g., oxidizers, catalysts, and solvents) shall be labeled and separated in storage.

F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with ~~an antibacterial~~ a soap product prior to providing services to each client. Licensees shall require that clients for nail care services shall cleanse their hands immediately prior to the requested nail care service;

2. An artificial nail shall only be applied to a healthy natural nail;

3. A nail drill or motorized instrument shall be used only on the free edge of the nail;

4. No shop, salon, school, or facility providing cosmetology or nail care services shall have on the premises cosmetic products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products;

5. No product shall be used in a manner that is disapproved by the FDA; and

6. All regulated services must be performed in a facility that is in compliance with current local building and zoning codes.

G. In addition to any requirements set forth in this section, all licensees and temporary permit holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational Safety and Health Compliance Division of the Virginia Department of Labor and Industry.

H. All shops, salons, schools, and facilities shall immediately report the results of any inspection of the shop, salon, or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All shops, salons, schools, and facilities shall maintain a self-inspection form on file to be updated on an annual basis, and kept for five years, so that it may be requested and reviewed by the board at its discretion.

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2. Compliance with these rules does not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.

3. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be a U.S. Environmental Protection Agency (EPA) registered disinfectant that is bactericidal, virucidal, and fungicidal. Disinfectant solutions shall be used according to manufacturer's directions.

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic, that the manufacturer designed for use on more than one client, is to be carried out in the following manner prior to servicing a client:

a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;

b. Wash thoroughly with hot water and soap;

c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;

d. Fully immerse implements into solution for a minimum of 10 minutes; and

e. After immersion, rinse articles, dry thoroughly with a clean paper towel, and store in a clean, predisinfected, and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable tools or implements may be stored in an area other than in a closed cabinet or container. This area shall be clean.

5. All materials including cosmetic and nail brushes, sponges, chamois, spatulas, and galvanic electrodes must be cleaned with warm water and soap or detergent to remove all foreign matter. Implements should then be rinsed, thoroughly dried with a clean paper towel, and completely immersed in an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal. Such implements shall be soaked for 10 minutes or more, removed, rinsed, dried thoroughly, and stored in a predisinfected and dry drawer, cabinet, or nonairtight covered container, or left in an EPA-registered disinfection storage solution used according to manufacturer's directions.

6. All wax pots shall be cleaned and disinfected with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items that may pose a hazard.

7. Each esthetician must have a wet disinfection unit at his station.

8. Nail brushes; nippers; finger bowls; disinfectable or washable buffers; disinfectable or washable files, which must also be scrubbed with a brush to remove all foreign matter; and other instruments must be washed in soap and water, rinsed, dried thoroughly with a clean paper towel, and then completely immersed in an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal for 10 minutes after each use. After disinfection they must be rinsed, dried thoroughly with a clean paper towel, and placed in a dry, predisinfected, nonairtight covered receptacle, cabinet, or drawer, or left in an EPA-registered disinfectant storage system used according to manufacturer's directions.

9. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipeless units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

a. Drain all water and remove all debris;

b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residues and then rinse with water;

c. Disinfect by spraying or wiping the surface with an EPA-registered disinfectant that is bactericidal, virucidal, and fungicidal; and

d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. Service chairs, workstations and workstands, and back bars shall be clean;

2. The floor surface in all work areas must be of a washable surface other than carpet. The floor must be kept clean and free of debris, nail clippings, dropped articles, spills, clutter, trash, electrical cords, other waste materials, and other items that may pose a hazard;

3. All furniture, fixtures, walls, floors, windows, and ceilings shall be in good repair and free of water seepage and dirt. All mats shall be secured or shall lie flat;

4. A fully functional bathroom with a working toilet and sink must be available for clients. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. There must be ~~antibacterial~~ soap and clean single-use towels or hand air-drying device for the client's use. For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for client use;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee and electrical outlets shall be covered by plates;

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The spa area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals and to allow the free flow of air; and

9. Adequate lighting shall be provided.

D. Articles, tools, and products.

1. Any multiuse article, tool, or product that cannot be cleansed or disinfected is prohibited from use;

2. Soiled implements must be removed from the tops of work stations immediately after use;

3. Clean spatulas, other clean tools, or clean disposable gloves shall be used to remove bulk substances from containers;

4. Lotions, ointments, creams, and powders shall be labeled and kept in closed containers. A clean spatula shall be used to remove creams or other products from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be covered after each use;

5. All appliances shall be safely stored;

6. Presanitized tools and implements, linens, and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;

7. Clean towels, robes, or other linens shall be used for each patron. Clean towels, robes, or other linens shall be stored in a clean predisinfected and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;

8. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

9. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the spa or school in accordance with the guidelines of the Virginia Department of Health and OSHA (Occupational Safety and Health Administration).

E. Chemical storage and emergency information.

1. Spas and schools shall have in the immediate working area a binder with all Safety Data Sheets (SDS) provided by manufacturers for any chemical products used;

2. Spas and schools shall have a blood spill clean-up kit in the work area that contains at a minimum latex gloves, two 12-inch by 12-inch towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any OSHA-approved blood spill clean-up kit;

3. Flammable chemicals shall be labeled and stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (e.g., oxidizers, catalysts, and solvents) shall be labeled and separated in storage.

F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with ~~an antibacterial~~ a soap product prior to providing services to each client;

2. All employees providing client services shall wear gloves while providing services when exposure to bloodborne pathogens is possible;

3. No spa or school providing esthetics services shall have on the premises esthetics products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in esthetics products;

4. No product shall be used in a manner that is disapproved by the FDA; and

5. Esthetics spas must be in compliance with current building and zoning codes.

G. In addition to the requirements set forth in this section, all licensees and temporary license holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry.

H. All spas and schools shall immediately report the results of any inspection of the spa or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All spas and schools shall conduct a self-inspection on an annual basis and maintain a self-inspection form on file for five years so that it may be requested and reviewed by the board at its discretion.

VA.R. Doc. No. R23-7243; Filed September 16, 2022, 12:27 p.m.

BOARD OF MEDICINE

Final Regulation

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

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-40, 18VAC85-50-101, 18VAC85-50-117).**

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

Effective Date: November 9, 2022.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Pursuant to Chapter 151 of the 2022 Acts of Assembly, the amendments (i) allow physician assistants appointed as medical examiners pursuant to § 32.1-282 of the Code of Virginia to practice without a practice agreement and (ii) allow physician assistants working in the field of orthopedics to use fluoroscopy.

18VAC85-50-40. General requirements.

A. No person shall practice as a physician assistant in the Commonwealth of Virginia except as provided in this chapter.

B. ~~All~~ Except as provided in § 54.1-2952 C of the Code of Virginia, all services rendered by a physician assistant shall be performed only in accordance with a practice agreement with one or more doctors of medicine, osteopathy, or podiatry licensed by this board to practice in the Commonwealth.

18VAC85-50-101. Requirements for a practice agreement.

A. Prior to initiation of practice, a physician assistant and one or more patient care team physicians or podiatrists shall enter into a written or electronic practice agreement that spells out the roles and functions of the assistant and is consistent with provisions of § 54.1-2952 of the Code of Virginia.

1. Any such practice agreement shall take into account such factors as the physician assistant's level of competence, the number of patients, the types of illness treated by the physicians or podiatrists, the nature of the treatment, special procedures, and the nature of the physicians' or podiatrists' availability in ensuring direct physician or podiatrist involvement at an early stage and regularly thereafter.

2. The practice agreement shall also provide an evaluation process for the physician assistant's performance, including a requirement specifying the time period, proportionate to the acuity of care and practice setting, within which the physicians or podiatrists shall review the record of services rendered by the physician assistant.

3. The practice agreement may include requirements for periodic site visits by licensees who supervise and direct the patient care team physicians or podiatrists to collaborate and consult with physician assistants who provide services at a location other than where the physicians or podiatrists regularly practice.

B. The board may require information regarding the degree of collaboration and consultation by the patient care team physicians or podiatrists. The board may also require a patient care team physician or podiatrist to document the physician assistant's competence in performing such tasks.

C. If the role of the physician assistant includes prescribing drugs and devices, the written practice agreement shall include those schedules and categories of drugs and devices that are within the scope of practice and proficiency of the patient care team physicians or podiatrists.

D. If the initial practice agreement did not include prescriptive authority, there shall be an addendum to the practice agreement for prescriptive authority.

E. If there are any changes in consultation and collaboration, authorization, or scope of practice, a revised practice agreement shall be entered into at the time of the change.

F. Physician assistants appointed as medical examiners pursuant to § 32.1-282 of the Code of Virginia may practice without a written or electronic practice agreement.

18VAC85-50-117. Authorization to use fluoroscopy.

A physician assistant working under a practice agreement with a licensed doctor of medicine or osteopathy specializing in the field of radiology or orthopedics is authorized to use fluoroscopy for guidance of diagnostic and therapeutic procedures provided such activity is specified in his protocol and he has met the following qualifications:

1. Completion of at least 40 hours of structured didactic educational instruction and at least 40 hours of supervised clinical experience as set forth in the Fluoroscopy Educational Framework for the Physician Assistant created by the American Academy of Physician Assistants (AAPA) and the American Society of Radiologic Technologists (ASRT); and

2. Successful passage of the American Registry of Radiologic Technologists (ARRT) Fluoroscopy Examination.

VA.R. Doc. No. R23-7145; Filed September 14, 2022, 11:27 a.m.

Final Regulation

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

Title of Regulation: **18VAC85-160. Regulations Governing the Licensure of Surgical Assistants and Certification of Surgical Technologists (amending 18VAC85-160-51).**

Statutory Authority: §§ 54.1-2400 and 54.1-2956.12 of the Code Virginia.

Effective Date: November 9, 2022.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Summary:

Pursuant to Chapter 71 of the 2022 Acts of Assembly, the amendments require the Board of Medicine to certify a surgical technologist who registers with the board by December 31, 2022, and provides satisfactory evidence of (i) practicing as a surgical technologist or (ii) attending a surgical technologist training program prior to October 1, 2022.

18VAC85-160-51. Requirements for certification as a surgical technologist.

A. An applicant for certification as a surgical technologist shall submit a completed application and a fee as prescribed in 18VAC85-160-40 on forms provided by the board.

B. An applicant for certification as a surgical technologist shall provide satisfactory evidence of:

1. Successful completion of an accredited surgical technologist training program and a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor; ~~or~~

2. Successful completion of a training program for surgical technology during the applicant's service as a member of any branch of the armed forces of the United States.

C. The board will certify a surgical technologist who registers with the board by December 31, 2022, if that surgical technologist provides satisfactory evidence of:

1. Practice as a surgical technologist prior to October 1, 2022; or

2. Attendance of a surgical technologist training program prior to October 1, 2022.

VA.R. Doc. No. R23-7146; Filed September 14, 2022, 11:26 a.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 6 of the Code of Virginia, which exempts agency action relating to customary military, naval, or police functions.

Title of Regulation: **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-80).**

Statutory Authority: § 52-8.4 of the Code of Virginia; 49 CFR Part 390.

Effective Date: November 14, 2022.

Agency Contact: Captain Sean Stewart, Safety Officer, Motor Carrier Division, Department of State Police, P.O. Box 27472, Richmond, VA 23261, telephone (804) 278-5303, or email sean.stewart@vsp.virginia.gov.

Summary:

The amendment updates the reference to the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration to those in effect on and after October 1, 2022.

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to this chapter operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of ~~November 1, 2021~~ October 1, 2022, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subparts E and F, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in this chapter by reference, with certain exceptions.

VA.R. Doc. No. R23-7354; Filed September 14, 2022, 8:32 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

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

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-190).**

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Effective Date: November 10, 2022.

Agency Contact: Em Parente, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7895, FAX (804) 726-7538, or email em.parente@dss.virginia.gov.

Summary:

Pursuant to Chapter 377 of the 2022 Acts of Assembly, the amendments allow for the written notice to a birth father to be provided by certified mail with proof of service or express mail with proof of delivery to the birth father's last known address, including a provision that specifies when written notice is provided to a birth father before the birth of the child, the registration with the Virginia Birth Father Registry will be considered untimely if it is received by the Virginia Department of Social Services more than 10 days after the personal service of the written notice or more than 13 days after the certified or express mailing date of the written notice, whichever occurs first, and a provision that specifies when the mother has misrepresented to the father that she terminated the pregnancy, miscarried, or the child died when the child is alive, the father has 10 days to register upon discovering the misrepresentation unless 180 days have elapsed from the date the circuit court entered the Final Order Adoption.

22VAC40-201-190. Virginia Birth Father Registry.

A. The department shall establish and maintain a putative father registry that is a confidential database.

B. A search of the Virginia Birth Father Registry shall be conducted for all adoptions except when the child has been adopted according to the laws of a foreign country or when the child was placed in Virginia from a foreign country for the purpose of adoption in accordance with § 63.2-1104 of the Code of Virginia.

C. Any petitioner who files a petition for termination of parental rights or for an adoption proceeding shall request a search of the Virginia Birth Father Registry. The certificate of search and finding must be filed with the court before an adoption or termination of parental rights proceeding can be concluded.

D. Any man who desires to be notified of an adoption proceeding or termination of parental rights regarding a child that he may have fathered shall register with the Virginia Birth Father Registry.

E. A registration is timely when it is received by the department within:

1. 10 days of the child's birth, unless written notice has been provided prior to the child's birth and the time period for registration under subsection 2 of this subsection applies or discovery of a misrepresentation has occurred and the time period for registration under subsection 3 of this subsection applies;

2. 10 days of the date of personal service of the written notice required under subsection F of § 63.2-1250 or within 13 days of the date of such written notice when sent by certified ~~mailing date of such written notice~~ mail with proof of service or express mail with proof of delivery, whichever occurs first; or

3. 10 days upon the registrant's discovery of misrepresentation by the birth mother that led him to believe that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) the child died when in fact the child is alive. However, registration within 10 days of discovery of such misrepresentations shall be considered untimely if 180 days have elapsed from the date the circuit court entered the final order of adoption.

F. The department may require additional information to determine that the individual requesting information from the Virginia Birth Father Registry is eligible to receive information in accordance with § 63.2-1251 of the Code of Virginia.

VA.R. Doc. No. R23-7222; Filed September 14, 2022, 11:01 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq.) in accordance with the second enactment of Chapters 561 and 562 of the 2022 Acts of Assembly, which exempts the actions of the board relating to the initial adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide a public comment period prior to adoption of final regulations.

Title of Regulation: **22VAC40-211. Foster and Adoptive Home Approval Standards for Local Departments of Social Services (adding 22VAC40-211-140).**

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Effective Date: November 10, 2022.

Agency Contact: Keisha Williams, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7550, FAX (804) 726-7173, or email k.williamson@dss.virginia.gov.

Summary:

Pursuant to Chapters 561 and 562 of the 2022 Acts of Assembly, the amendments create a notice requirement and appeal structure when a local board denies an individual's request to become a kinship foster parent. These new requirements mandate (i) that local boards must provide individuals who have expressed interest in becoming a kinship foster parent with any forms or materials that must be submitted for the approval process within no more than 15 days of such request; (ii) that if the individual is denied the ability to become a kinship foster parent, the local board shall provide to the individual a clear and specific explanation of the reasons for such denial, a statement that such denial is appealable pursuant to § 63.2-915 of the Code of Virginia, and an explanation of the procedure for filing such appeal; and (iii) that upon receiving a request for an appeal regarding a kinship foster parent denial, the Office of Appeals and Fair Hearings must conduct a hearing as soon as practicable and a decision rendered within no more than 90 days from the date of receipt of the individual's written notice of the individual's intent to appeal.

22VAC40-211-140. Kinship foster parent appeals and notice.

A. Pursuant to §§ 63.2-900.1 and 63.2-915 of the Code of Virginia, any relative, as defined in § 63.2-900.1, whose request to become a kinship foster parent is denied shall have the right to file an appeal with the commissioner.

B. If a relative's request to become a kinship foster parent is denied, the local board shall provide the relative with the written notification of the decision by mail to the last known address of the relative within 14 calendar days of the denial, and a copy of the written notification shall be mailed to the

Office of Appeals and Fair Hearings. The notification shall include (i) a clear and specific explanation of the reasons for such denial, (ii) a statement that such denial is appealable pursuant to § 63.2-915 of the Code of Virginia, (iii) information regarding the procedure for filing such appeal, and (iv) contact information for the Office of Appeals and Fair Hearings.

C. If the relative chooses to appeal the denial, the relative must contact the Office of Appeals and Fair Hearings and disclose their intent to appeal. The relative's intent to appeal must be in writing and received by the Office of Appeals and Fair Hearings in no more than 30 calendar days from the date on the written notification from the local board.

D. Upon timely receipt of the relative's written notice of their intent to appeal the decision of the local board, the Office of Appeals and Fair Hearings shall accept the appeal and send a request to the local board for all documents related to the denial of the relative. The Office of Appeals and Fair Hearings will notify the relative in writing of the hearing date at least 10 calendar days prior to the hearing.

E. A hearing shall be conducted by the Office of Appeals and Fair Hearings as soon as practicable, and the relative shall be afforded the opportunity to testify on their behalf and produce witness testimony. The Office of Appeals and Fair Hearings shall render a decision in no more than 90 calendar days from the date of receipt of the relative's written notice of the relative's intent to appeal.

F. The Office of Appeals and Fair Hearings will notify the relative and the local board of the outcome of the appeal in writing. The decision of the local board may either be sustained or reversed. If the decision of the local board is reversed, the local board shall respond in writing to the Office of Appeals and Fair Hearings within 14 calendar days and confirm that the relative's request to become a kinship foster parent has been conditionally approved, so long as all approval requirements are completed timely pursuant to law and policy.

VA.R. Doc. No. R23-7224; Filed September 14, 2022, 10:30 a.m.

Final Regulation

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

Title of Regulation: **22VAC40-705. Child Protective Services (amending 22VAC40-705-10, 22VAC40-705-30).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Effective Date: November 10, 2022.

Agency Contact: Mary Walter, Child Protective Services Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7499, or email mary.walter@dss.virginia.gov.

Summary:

To conform regulation to Chapter 366 of the 2022 Acts of Assembly, the amendments expand the definition of a caretaker in the criteria for a valid child protective services report or complaint of sexual abuse or sexual exploitation to include the intimate partner of the parent or caretaker of an alleged victim child.

22VAC40-705-10. Definitions.

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

"Abuser or neglector" means any person who is found to have committed the abuse or neglect of a child pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.2-1526 of the Code of Virginia, under which an individual who is found to have committed abuse or neglect may request that the local department's determination or records be amended.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Appellant" means (i) anyone who has been found to be an abuser or neglector and appeals the founded disposition to the director of the local department of social services or to an administrative hearing officer and (ii) anyone who has been found to be an abuser or neglector and seeks judicial review of a decision by an administrative hearing officer.

"Assessment" means the process by which child protective services workers determine a child's and family's needs.

"Caretaker" means any individual having the responsibility of providing care and supervision of a child and includes the following: (i) a parent or other person legally responsible for the child's care; (ii) an individual who by law, social custom, expressed or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after a child left in his care; and (iii) persons responsible by virtue of their positions of conferred authority.

"Case record" means a collection of information maintained by a local department, including written material, letters, documents, audio or video recordings, photographs, film, or other materials, regardless of physical form, about a specific child protective services investigation, family, or individual.

"Central Registry" means a subset of the child abuse and neglect information system and is the name index with

identifying information of individuals named as an abuser or neglector in founded child abuse or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Child abuse and neglect information system" means the statewide computer system that collects and maintains information gathered by local departments regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the Central Registry of founded complaints not on administrative appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system required by federal law.

"Child protective services" means the identification, receipt, and immediate response to complaints and reports of alleged child abuse or neglect for children younger than 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and the child's family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child protective services worker" means an individual who is qualified by virtue of education, training, and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse or neglect.

"Chronically and irreversibly comatose" means a condition caused by injury, disease, or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation that a child is an abused or neglected child as defined in § 63.2-100 of the Code of Virginia made orally or in writing.

"Consultation" means the process by which the alleged abuser or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse or neglect against that person pursuant to § 63.2-1526 A of the Code of Virginia.

"Controlled substance" means a drug, substance, or marijuana as defined in § 18.2-247 of the Code of Virginia including those terms as they are used or defined in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.2 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means the system by which local departments may respond to valid reports or complaints of child abuse or neglect by conducting either a family assessment or an investigation.

"Disposition" means the determination of whether or not child abuse or neglect occurred and that identifies the individual responsible for the abuse or neglect of the child.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts, and evidence.

"Family Advocacy Program representative" means the individual employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up, and reporting of family violence, pursuant to 22VAC40-705-50 and 22VAC40-705-140.

"Family assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child; and

4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker of the child.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts gathered as a result of an investigation shows by a preponderance of the evidence that child abuse or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"Human trafficking assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and the child's family that will deter abuse and neglect; and

3. Risk of future harm to the child.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Indirect evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for the child's condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Investigation" means the collection of information to determine:

1. The immediate safety needs of the child;

2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

3. Risk of future harm to the child;

4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;

5. Whether or not abuse or neglect has occurred;

6. If abuse or neglect has occurred, who abused or neglected the child; and

7. A finding of either founded or unfounded based on the facts collected during the investigation.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-105 of the Code of Virginia.

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations or family assessments of child abuse or neglect complaints or reports pursuant to § 63.2-1503 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse or neglect pursuant to § 63.2-1509 of the Code of Virginia.

"Monitoring" means ongoing contacts with the child, family, and collaterals that provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal, and law enforcement which will assist local departments in the protection and prevention of child abuse and neglect established pursuant to § 63.2-1503 K of the Code of Virginia. Citizen representatives may also be included.

"Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. Serious or critical condition is a life-threatening condition or injury.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Plan of safe care" means a guide developed by service providers with their clients to ensure mothers and other caretakers of a substance-exposed infant have the necessary resources to safely care for the infant. The plan should address the needs of the child, mother, and other caretakers, as appropriate.

"Preponderance of evidence" means just enough evidence to make it more likely than not that the asserted facts are true. "Preponderance of evidence" is evidence that is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§ 63.2-1513 and 63.2-1514 of the Code of Virginia.

"Reasonable diligence" means the exercise of persistent effort that is justifiable and appropriate under the circumstances.

"Report" means (i) a complaint as defined in this section or (ii) an official document on which information is given concerning abuse or neglect.

"Response time" means the time for the local department to initiate an investigation or family assessment after receiving a

valid report of suspected child abuse or neglect based upon the facts and circumstances presented at the time the complaint or report is received.

"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.

"Service plan" means a plan of action to address the service needs of a child or the child's family in order to protect a child and the child's siblings to prevent future abuse and neglect and to preserve the family life of the parents and children whenever possible.

"Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act as defined in § 18.2-357.1 of the Code of Virginia.

"State automated system" means the "child abuse and neglect information system" as previously defined.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

"Terminal condition" means a condition caused by injury, disease, or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

"Valid report or complaint" means a report or complaint of suspected child abuse or neglect for which the local department must conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child is younger than 18 years of age at the time of the complaint or report;

2. The alleged abuser is the alleged victim child's parent or other caretaker or, for purposes of abuse or neglect described in subdivision 4 of the definition of "abused or neglected child" in § 63.2-100 of the Code of Virginia, an intimate partner of such parent or caretaker;

3. The local department receiving the complaint or report is a local department of jurisdiction; and

4. The circumstances described allege suspected child abuse or neglect.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) that in the treating physician's reasonable medical judgment will most likely be effective in ameliorating or correcting all such conditions.

22VAC40-705-30. Types of abuse and neglect.

A. Physical abuse occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means or creates a substantial risk of death, disfigurement, or impairment of bodily functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248 of the Code of Virginia.

B. Physical neglect occurs when there is the failure to provide food, clothing, shelter, necessary medical treatment, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent's or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § 63.2-100 of the Code of Virginia. This also includes a child under the age of 18 years whose parent or other person responsible for his care knowingly leaves the child alone in the same dwelling as a person, not related by blood or marriage, who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902 of the Code of Virginia. In situations where the neglect is the result of family poverty and there are no outside resources available to the family, the parent or caretaker shall not be determined to have neglected the child; however, the local department may provide appropriate services to the family.

1. Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

2. Physical neglect may include failure to thrive.

a. Failure to thrive occurs as a syndrome of infancy and early childhood that is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

3. Physical neglect may include medical neglect.

a. Medical neglect occurs when there is the failure by the caretaker to obtain or follow through with a complete regimen of medical, mental, or dental care for a condition that if untreated could result in illness or developmental delays. However, a decision by parents or other persons legally responsible for the child to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the

parents or other person legally responsible for the child and the child; (ii) the child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person legally responsible for the child and the child have considered alternative treatment options; and (iv) the parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.

b. Medical neglect also includes withholding of medically indicated treatment.

(1) A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not for that reason alone be considered a neglected child in accordance with § 63.2-100 of the Code of Virginia.

(2) For the purposes of this chapter, "withholding of medically indicated treatment" does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician's or physicians' reasonable medical judgment:

(a) The infant is chronically and irreversibly comatose;

(b) The infant has a terminal condition and the provision of such treatment would (i) merely prolong dying; (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; (iii) otherwise be futile in terms of the survival of the infant; or (iv) be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

C. Mental abuse or neglect occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

1. Mental abuse or neglect includes acts of omission by the caretaker resulting in harm to a child's psychological or emotional health or development.

2. Documentation supporting a nexus between the actions or inactions of the caretaker and the mental dysfunction or threat of dysfunction demonstrated by the child is required in order to make a founded disposition.

3. Mental abuse or neglect may include failure to thrive.

a. Failure to thrive occurs as a syndrome of infancy and early childhood that is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

D. Sexual abuse occurs when the child's parent, caretaker, or intimate partner of such parent or caretaker commits or allows to be committed any act of sexual exploitation, including sex trafficking as defined in 22VAC40-705-10, or any sexual act upon a child in violation of the law.

VA.R. Doc. No. R23-7213; Filed September 14, 2022, 10:31 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: Agricultural Stewardship Act Guidelines.

Public Comment Deadline: November 9, 2022.

Effective Date: November 10, 2022.

Agency Contact: Darrell Marshall, Agricultural Stewardship Program Manager, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-2658, or email darrell.marshall@vdacs.virginia.gov.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

BOARD OF COUNSELING

BOARD OF DENTISTRY

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

BOARD OF HEALTH PROFESSIONS

BOARD OF LONG-TERM CARE ADMINISTRATORS

BOARD OF MEDICINE

BOARD OF NURSING

BOARD OF OPTOMETRY

BOARD OF PHARMACY

BOARD OF PHYSICAL THERAPY

BOARD OF PSYCHOLOGY

BOARD OF SOCIAL WORK

BOARD OF VETERINARY MEDICINE

DEPARTMENT OF HEALTH PROFESSIONS

Title of Document: The Adjudication Process.

Public Comment Deadline: November 9, 2022.

Effective Date: November 10, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

BOARD OF COUNSELING

Title of Document: Disciplinary Possible Actions for Noncompliance with Continuing Education Requirements; Recommendations for Continuing Education Requirements.

Public Comment Deadline: November 9, 2022.

Effective Date: November 10, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

BOARD OF DENTISTRY

Titles of Documents: Confidential Consent Agreements.

Virginia Board of Dentistry Bylaws.

Public Comment Deadline: November 9, 2022.

Effective Date: November 10, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

STATE BOARD OF EDUCATION

Titles of Documents: Guidelines for Implementing New Appropriation Act Provisions for Literary Fund School Construction Loans in the 2022-2024 Biennium.

Guidelines for Policies on Sudden Cardiac Arrest Prevention in Student Athletes.

Public Comment Deadline: November 9, 2022.

Effective Date: November 10, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

BOARD OF NURSING

Title of Document: Medication Administration Training Curriculum Approved by the Board of Nursing for Various Settings.

Public Comment Deadline: November 9, 2022.

Effective Date: November 10, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Title of Document: Grant Application Guidance and Grant Management Procedures for Federal Transit Administration Section 5310: Enhanced Mobility of Seniors and Individuals with Disabilities Programs.

Public Comment Deadline: November 9, 2022.

Effective Date: December 1, 2022.

Agency Contact: Andrew Wright, Senior Legislative and Policy Specialist, Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219, telephone (804) 241-0301, or email andrew.wright@drpt.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Enforcement Action for Doswell Truck Stop LLC

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Doswell Truck Stop LLC for alleged violation of the State Water Control Law at the Doswell Truck Stop site located at 10222 Kings Dominion Boulevard, Doswell, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. DEQ staff will accept comments by email or postal mail from October 10, 2022, to November 10, 2022.

Contact Information: Jeff Reynolds, Regional Enforcement Manager, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 720-4754, or email jefferson.reynolds@deq.virginia.gov.

Notice of Enforcement Action for Haymes Brothers Inc.

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Haymes Brothers Inc. for alleged violation of the State Water Control Law at the Old Cox Road Laydown Yard located near Old Cox Road in Mecklenburg County, Virginia (latitude 36.6950, longitude - 78.3809). A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. DEQ staff will accept comments by email or postal mail from October 10, 2022, to November 10, 2022.

Contact Information: Jeff Reynolds, Regional Enforcement Manager, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 720-4754, or email jefferson.reynolds@deq.virginia.gov.

Proposed Enforcement Action for Scott J. McCoy and Faye M. McCoy - Prince George County

The Department of Environmental Quality (DEQ) proposes to issue a consent special order to Scott J. McCoy and Faye M. McCoy for alleged violation of the State Water Control Law at the property located at 2150 Coggins Point Road, Prince George County, Virginia. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from October 10, 2022, through November 10, 2022.

Contact Information: Cara Witte, Enforcement Specialist, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Notice of Enforcement Action for Owen Anderson LLC

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Owen Anderson LLC for alleged violation of the State Water Control Law at the Old Cox Road Spoil Area located near Old Cox Road in Mecklenburg County, Virginia (latitude 36.6875, longitude - 78.3800). A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. DEQ staff will accept comments by email or postal mail from October 10, 2022, to November 10, 2022.

Contact Information: Jeff Reynolds, Regional Enforcement Manager, Department of Environmental Quality, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 720-4754, or email jefferson.reynolds@deq.virginia.gov.

Proposed Enforcement Action for Rockingham County Landfill

An enforcement action has been proposed for Rockingham County for violations of State Water Control Board and Virginia Waste Management Board regulations at the Rockingham County Landfill in Harrisonburg, Virginia. The proposed consent order is available from the Department of Environmental Quality contact listed or at www.deq.virginia.gov. The staff contact will accept comments by email, fax, or postal mail from October 10 2022, to November 9, 2022.

Contact Information: Eric Millard, Senior Enforcement Specialist, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email eric.millard@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Durable Medical Equipment Provider Manual

The draft Durable Medical Equipment Provider Manual Chapter II is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until October 21, 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Home Health Provider Manual

The draft Home Health Provider Manual Chapters II and IV are now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until October 21, 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Hospice Provider Manual

The draft Hospice Provider Manual Chapter II is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until October 21, 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Hospital Provider Manual

The draft Hospital Provider Manual Chapter IV is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until October 21, 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest.**

Publication: 39:2 VA.R. 33-43 September 12, 2022.

Correction to Final Regulation:

Page 42, column 1, 4VAC20-720-40 B 22, after "Area" insert "Public Ground 9"

subdivision B 23, after "23." insert "Pocomoke Sound Area Public Ground 10: November 15, 2022, through November 30, 2022, and February 1, 2023, through February 28, 2023 (hand scrape only).

24."

column 2, 4VAC20-720-40 B 24, after "~~23.~~" replace "24." with "25."

subdivision B 25, strike "25." and insert "26."

subdivision B 26, strike "26." and insert "27."

4VAC20-720-60 B, line 12, after "through" replace "B 25" with "B 26"

Page 43, 4VAC20-720-70 C, line 2, after "B ~~20~~" replace "22" with "23"

subsection F, line 2, after "4VAC20-720-40" strike "B"

after "~~through~~" delete "24 and"

after "B 25" insert "and B 26"

VA.R. Doc. No. R23-7320; Filed September 13, 2022, 2:33 p.m.

VIRGINIA LOTTERY BOARD

Title of Regulation: **11VAC5-90. Casino Gaming.**

Publication: 38:13 VA.R. 1833-1977 February 14, 2022.

Correction to Final Regulation:

Page 1859, column 2, 11VAC5-90-90 I 1, line 3, after "with" replace "11VAC5-90-180" with "11VAC5-20-180"

VA.R. Doc. No. R21-6662; Filed September 12, 2022, 10:56 a.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services.**

Publication: 39:2 VA.R. 44 September 12, 2022.

Correction to Notice of Extension of Emergency Regulation:

Page 44, Title of Regulation, line 7, beginning of line, replace "**12VAC35-105-1820**" with "**12VAC35-105-1860**"

VA.R. Doc. No. R21-6439; Filed September 16, 2022, 2:23 p.m.