VIRGINIA REGISTER OF REGULATIONS

VOL. 31 ISS. 21 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | JUNE 15, 2015

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THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly by Matthew Bender & Company, Inc., 1275 Broadway, Albany, NY 12204-2694 for $246.00 per year. Periodical postage is paid in Conklin, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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

An agency wishing to adopt, amend, or repeal regulations must first publish 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 proposal 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 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 (JCAR) 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 changes made to the proposed regulation 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*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, 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 exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. 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. **29:5 VA.R. 1075-1192 November 5, 2012,** refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register*'s Internet home page (http://register.dls.virginia.gov).

June 2015 through May 2016

Volume: Issue	Material Submitted By Noon*	Will Be Published On
31:21	May 27, 2015	June 15, 2015
31:22	June 10, 2015	June 29, 2015
31:23	June 24, 2015	July 13, 2015
31:24	July 8, 2015	July 27, 2015
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32:5	October 14, 2015	November 2, 2015
32:6	October 28, 2015	November 16, 2015
32:7	November 10, 2015 **(Tuesday)**	November 30, 2015
32:8	November 24, 2015 **(Tuesday)**	December 14, 2015
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 **(Monday)**	January 11, 2016
32:11	January 6, 2016	January 25, 2016
32:12	January 20, 2016	February 8, 2016
32:13	February 3, 2016	February 22, 2016
32:14	February 17, 2016	March 7, 2016
32:15	March 2, 2016	March 21, 2016
32:16	March 16, 2016	April 4, 2016
32:17	March 30, 2016	April 18, 2016
32:18	April 13, 2016	May 2, 2016
32:19	April 27, 2016	May 16, 2016
32:20	May 11, 2016	May 30, 2016

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 11. GAMING

CHARITABLE GAMING BOARD

Initial Agency Notice

Title of Regulation: **11VAC15-40. Charitable Gaming Regulations.**

Statutory Authority: § 18.2-340.15 of the Code of Virginia.

Name of Petitioner: Jim McIntire, VTabs.

Nature of Petitioner's Request: Petitioner requests that the Charitable Gaming Board amend Charitable Gaming Regulations to increase the number of electronic pull-tab devices used to facilitate the play of electronic pull-tabs sold, played, and redeemed at any premises pursuant to § 18.2-340.26:1 of the Code of Virginia (i.e., social quarters). Petitioner proposes that if the premises' Certificate of Occupancy establishes that the premises can accommodate more than 150 occupants, then the current limit of five electronic pull-tab devices at these premises should be increased to nine electronic-pull tab devices.

Agency Plan for Disposition of Request: The Charitable Gaming Board will consider this request at its next scheduled meeting following the public comment period. This meeting will occur on September 8, 2015.

Public Comment Deadline: July 5, 2015.

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

VA.R. Doc. No. R15-32; Filed May 22, 2015, 2:29 p.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Initial Agency Notice

Title of Regulation: **12VAC35. None specified.**

Statutory Authority: N/A.

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Create a new regulation to require community services boards and behavioral health authorities (as defined in § 37.2-100) to produce guidance documents for petitions for modification or removal of conditions at anytime, pursuant to § 19.2-182.11 of the Code of Virginia.

Agency Plan for Disposition of Request: The board will consider the petition and public comment at its next scheduled meeting on July 16, 2015, in Richmond, Virginia.

Public Comment Deadline: July 5, 2015.

Agency Contact: Ruth Anne Walker, Department of Behavioral Health and Developmental Services, 1220 Bank Street, 11th Floor, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-2252, or email ruthanne.walker@dbhds.virginia.gov.

VA.R. Doc. No. R15-33; Filed May 29, 2015, 14:55 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Agency Decision

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

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

Name of Petitioner: Elena Aponte-Bostwick.

Nature of Petitioner's Request: To accept applicants for licensure by endorsement who were licensed in Puerto Rico by an examination comparable to the NCLEX.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on May 19, 2015, the board considered the petition and all the comments received in response. While members appreciated the particular situation of this petitioner, the board decided to take no action on the petition. In doing so, the members affirmed that the NCLEX was the examination acceptable for licensure. Since the board has no means of evaluating the comparability of other examinations, it has to apply a consistent standard for all applicants for licensure by endorsement regardless of their previous licensure in other U.S. jurisdictions.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R15-26; Filed May 20, 2015, 9:22 a.m.

BOARD OF PSYCHOLOGY

Agency Decision

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology.**

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

Name of Petitioner: Gentry Nalley.

Nature of Petitioner's Request: Amend section on standards of practice to require that a psychologist report to the court and counsel recantations of abuse allegations by a minor.

Agency Decision: Request denied.

Statement of Reason for Decision: After much discussion, the board decided not to initiate rulemaking as requested. Members acknowledged that recantations were a difficult issue and advised that further guidance and education might be useful in assisting licensees with handling such situations. Since there are so many variables to be considered, the board felt that current standards allow for flexibility for different situations but also provide sufficient grounds for disciplinary action should there be clear and convincing evidence that a violation of law or regulation has occurred.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R15-19; Filed May 20, 2015, 9:11 a.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-40. Voter Registration (amending 1VAC20-40-70).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information:

July 28, 2015 - 8 a.m. - Double Tree by Hilton, James River Ballroom, 1024 Koger Center Boulevard, Richmond, VA 23235

Public Comment Deadline: July 15, 2015.

Agency Contact: Martha Brissette, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 371-0194, or email martha.brissette@elections.virginia.gov.

Summary:

The proposed amendments (i) expand the list of omissions not considered material for purposes of determining completeness of the voter registration application; (ii) address the use of the voter registration application to change the name or address of the voter; and (iii) make a technical change to reflect the establishment of the Department of Elections.

1VAC20-40-70. Applications for voter registration; affirmation of United States citizenship.

A. Form and signature.

1. Applications for voter registration shall be on a form approved by the State Board of Elections or appropriate federal agency.

2. ~~Applications for voter registration must be signed by the applicant. If the applicant is unable to sign due to a physical disability, the name and address of the person assisting the voter shall be entered on the application according to the form instructions.~~ A signature is required by each applicant for voter registration unless the applicant is an individual with physical disabilities. An applicant with physical disabilities who does not sign the form must indicate physical disability in Box 7 or the application will be denied.

B. ~~Material omissions on applications for voter registration in general.~~ The following omissions are not material ~~if any of the following, or combination thereof, exists~~ and a voter registration application may not be denied for failure to include one or more of the following:

1. Daytime telephone number;

~~2. Description of a rural address;~~

~~3.~~ 2. Mailing address different from residence address;

~~4.~~ 3. Date of the application;

~~5. Whether the applicant is interested in working as an election official~~ 4. Response indicating interest in serving as an election officer;

~~6. Whether the applicant requests to have his residence address excluded from published lists~~ 5. Protected voter code;

~~7. Whether the applicant has a disability that requires accommodation in order to vote~~ 6. Response indicating the applicant has a physical disability; ~~or~~

~~8.~~ 7. Gender~~.~~;

8. Social security number if the applicant writes "none" in Box 1;

9. Response indicating military service or status as a qualified spouse or dependent;

10. Response indicating United States citizenship in Box 1 if the applicant has signed the affirmation;

11. Response affirmatively indicating that the applicant is not a felon in Box 5 if the applicant has signed the affirmation;

12. Response affirmatively indicating that the applicant has not been previously adjudicated to be mentally incapacitated in Box 5 if the applicant has signed the affirmation;

13. Signature of applicant if applicant indicates that he is an individual with physical disabilities in Box 7;

14. Address at which the voter is previously registered if the previous voter registration address is available in the Virginia Election and Registration Information System;

15. Witness signature in Box 7;

16. Middle name if the voter indicates "none"; or

17. Generational suffix.

C. Middle name may be material to determining eligibility to vote. If the applicant does not include a middle name and does not indicate none, the registrar shall:

1. As far as practical, attempt to contact the applicant and obtain his middle name or lack thereof to determine if the application is complete.

a. If the applicant indicates that he has no middle name, the registrar shall process the application.

b. If the applicant indicates that he has a middle name, the registrar shall inform the applicant that the middle name is required, deny the application, and send the applicant a new application.

2. If the registrar is unable to contact the applicant and therefore unable to determine if the application is incomplete, he shall give the benefit of doubt to the applicant and process the application.

D. A general registrar shall not change information provided by an applicant on an application for voter registration without written authorization signed by the applicant.

E. Persons identified as noncitizens in reports from the Department of Motor Vehicles or other state or federal government sources shall have the opportunity to affirm United States citizenship status using any approved voter registration application or other form containing the required affirmation. The State Board of Elections shall automate the process for requesting affirmation of United States citizenship prior to cancellation.

F. If the individual submitting this form is currently a registered voter in Virginia, then the registrar must process the form as a request to update or change the registered voter's information if the form contains new information and is signed by the voter. If a registered voter with a physical disability only includes a mark in Box 7, then the request must also be signed by a witness in Box 7.

~~F.~~ G. For cases not covered by this section, the general registrar in consultation with the electoral board and ~~State Board~~ Department of Elections staff shall determine materiality on a case-by-case basis that may result in further amendment of this regulation.

NOTICE: Forms used in administering the following regulation have been filed by the State Board of Elections. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-40)

~~Virginia Voter Registration Application Form, SBE 416.2 (rev. 7/13)~~

Virginia Voter Registration Application Form, VA-NVRA-1 (rev. 7/15)

National Voter Registration Application Form, Register to Vote in Your State by Using this Postcard Form and Guide (rev. 3/06)

Voter Photo Identification Card Application (undated)

VA.R. Doc. No. R15-4128; Filed May 22, 2015, 2:24 p.m.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulations have been filed by the Department of Agriculture and Consumer Services. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Titles of Regulations: **2VAC5-110. Rules and Regulations Pertaining to a Pound or Enclosure to Be Maintained by Each County or City.**

2VAC5-150. Rules and Regulations Governing the Transportation of Companion Animals.

Agency Contact: Dr. Carolynn Bissett, Program Manager, Office of Animal Care and Emergency Response, Department of Agriculture and Consumer, Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 692-4001, or email carolynn.bissett@vdacs.virginia.gov.

FORMS (2VAC5-110)

~~Animal Facility Inspection Form, VDACS AC-10 (eff. 07/09).~~

~~Animal Facility Inspection Form – Pound Regulations, VDACS AC-10-A (eff. 07/09).~~

~~Animal Facility Inspection Form – Animal Care, VDACS AC-10-B (eff. 07/09).~~

~~Animal Facility Inspection Form – Operations, VDACS AC-10-C (eff. 07/09).~~

Animal Facility Inspection Report, VDACS AC-10 (rev. 7/15)

Animal Facility Inspection Form – Pound Regulations, VDACS AC-10-A (rev. 7/15)

Animal Facility Inspection Form – Animal Care, VDACS AC-10-B (rev. 7/15)

Animal Facility Inspection Form – Operations, VDACS AC-10-C (rev. 7/15)

FORMS (2VAC5-150)

~~Animal Facility Inspection Form, VDACS AC-10 (eff. 07/09).~~

~~Animal Facility Inspection Form – Animal Transport, VDACS AC-10-1 (eff. 07/09).~~

Animal Facility Inspection Report, VDACS AC-10 (rev. 7/15)

Animal Facility Inspection Form – Animal Transport, VDACS AC-10-1 (rev. 7/15)

VA.R. Doc. No. R15-4407; Filed May 28, 2015, 3:57 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-40, 4VAC20-270-51, 4VAC20-270-55).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 5, 2015.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) continue the seasonal management approach, starting the next crab management season on July 5, 2015, and ending it on July 4, 2016, and opening the commercial crab pot season on March 17 and closing the commercial crab pot season on November 30; (ii) continue the current bushel limit management measures and dates for 2015 through 2016; (iii) adjust the closure dates for the non-crab pot gear season, closing the season on September 26 instead of September 16 and reopening the non-crab pot gear season on April 21 instead of May 1; and (iv) make it unlawful for any vessel to act as both a crab harvester and a crab buyer on the same trip.

4VAC20-270-40. Season limits.

A. In ~~2014~~ 2015 and ~~2015~~ 2016, the lawful seasons for the commercial harvest of crabs by crab pot shall be March 17 through November 30. For all other lawful commercial gear used to harvest crabs, as described in 4VAC20-1040, the lawful seasons for the harvest of crabs shall be ~~March 17~~ May 1 through September ~~15~~ 25 in ~~2014~~ 2015 and ~~May 1~~ April 21 through November 30 in ~~2015~~ 2016.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot in any tidal waters of Virginia from December 1, ~~2014~~ 2015, through March 16, ~~2015~~ 2016. It shall be unlawful for any person knowingly to place, set, fish, or leave any lawful commercial gear used to harvest crabs, except any hard crab pot, in any tidal waters of Virginia from September ~~16, 2014~~ 26, 2015 through April ~~30, 2015~~ 20, 2016.

D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500-50.

E. It shall be unlawful for any person to place, set, or fish any number of fish pots in excess of 10% of the amount allowed by the gear license limit, up to a maximum of 30 fish pots per vessel, when any person on that vessel has set any crab pots.

1. This subsection shall not apply to fish pots set in the areas described in subdivision D 1 of this section.

2. This subsection shall not apply to legally licensed eel pots as described in 4VAC20-500.

3. This subsection shall not apply to fish pots constructed of a mesh less than one-inch square or hexagonal mesh.

4VAC20-270-51. Daily commercial harvester, vessel, and harvest and possession limits.

A. Any barrel used by a harvester to contain or possess any amount of crabs will be equivalent in volume to no more than 3 bushels of crabs.

B. From July 5, ~~2014~~ 2015, through November 15, ~~2014~~ 2015, and April 1, ~~2015~~ 2016, through July 4, ~~2015~~ 2016, any Commercial Fisherman Registration Licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and

possession limits~~,~~ for any of the following crab pot license categories:

1. 10 bushels, or 3 barrels and 1 bushel, of crabs if licensed for up to 85 crab pots.

2. 14 bushels, or 4 barrels and 2 bushels, of crabs if licensed for up to 127 crab pots.

3. 18 bushels, or 6 barrels, of crabs if licensed for up to 170 crab pots.

4. 29 bushels, or 9 barrels and 2 bushels, of crabs if licensed for up to 255 crab pots.

5. 47 bushels, or 15 barrels and 2 bushels, of crabs if licensed for up to 425 crab pots.

C. From November 16, ~~2014~~ 2015, through November 30, ~~2014~~ 2015, and March 17, ~~2015~~ 2016, through March 31, ~~2015~~ 2016, any Commercial Fisherman Registration Licensee legally licensed for any crab pot license, as described in 4VAC20-270-50 B, shall be limited to the following maximum daily harvest and possession limits~~,~~ for any of the following crab pot license categories:

1. 8 bushels, or 2 barrels and 2 bushels, of crabs if licensed for up to 85 crab pots.

2. 10 bushels, or 3 barrels and 1 bushel, of crabs if licensed for up to 127 crab pots.

3. 13 bushels, or 4 barrels and 1 bushel, of crabs if licensed for up to 170 crab pots.

4. 21 bushels, or 7 barrels, of crabs if licensed for up to 255 crab pots.

5. 27 bushels, or 9 barrels, of crabs if licensed for up to 425 crab pots.

D. When a single harvester or multiple harvesters are on board any vessel, that vessel's daily harvest and possession limit shall be equal to only one daily harvest and possession limit, as described in subsections B and C of this section, and that daily limit shall correspond to the highest harvest and possession limit of only one licensee on board that vessel.

E. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels or barrels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, Commercial Fisherman Registration License number, date, and amount of bushels or barrels of crabs to be sold.

F. If any police officer finds crabs in excess of any lawful daily bushel, barrel, or vessel limit, as described in this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees who possess that excess over lawful daily harvest or possession limit. The refusal to return crabs, in excess of any lawful daily harvest or possession limit, to the water shall constitute a separate violation of this chapter.

G. When any person on board any boat or vessel possesses a crab pot license, it shall be unlawful for that person or any other person aboard that boat or vessel to possess a seafood buyers boat license and buy any crabs on any day.

4VAC20-270-55. Minimum size limits.

A. From March ~~16~~ 17 through July 15, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From July 16 through November 30, it shall be unlawful for any person to harvest, possess, sell, or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From July 16 through November 30, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

C. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

D. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

VA.R. Doc. No. R15-4384; Filed May 28, 2015, 1:19 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-370. Pertaining to the Culling of Crabs (amending 4VAC20-370-20).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2015.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment reduces the time period during which it is unlawful for any person to possess dark sponge crabs.

4VAC20-370-20. Culling requirements.

A. All crabs taken from the tidal waters of Virginia shall be culled to the legal size and possession limits by the catcher at the location of the harvest.

B. The catcher shall use culling containers (other than bushel baskets and barrels normally used for crabs) for the purpose of culling crabs during the harvesting process. Crabs placed loose in any boat are subject to be culled at any time. The provisions of this section shall not apply to the harvesting of crabs from a licensed crab trap (crab pound).

C. During culling, all undersize crabs shall be immediately returned to the water as required by § 28.2-708 of the Code of Virginia.

D. From March 17 through ~~June 30~~ June 15, it shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of the presence of a dark egg mass more than 10 dark sponge crabs per United States standard bushel or 35 dark sponge crabs per barrel, and the following conservation measures shall be in effect:

1. During culling, those dark sponge crabs in excess of the allowance level shall be immediately returned to the water alive and shall not be altered or destroyed in any manner.

2. It shall be unlawful for any person to possess for a period longer than is necessary for immediate determination of unnatural removal of eggs, a female blue crab that has been scrubbed or has in any manner other than natural hatching had the eggs removed therefrom.

3. Any marine patrol officer may grade or cull any number of barrels, baskets, or containers of crabs in any person's possession. If the officer finds more than 10 dark sponge crabs per United States standard bushel or 35 per barrel, he shall seize the entire quantity of crabs in or from each such container, and the person who possessed the crabs shall immediately return them to the water. Refusal to return the crabs to the water is a separate offense from any other violation.

E. Nothing in this section shall prohibit the possession of dark sponge ~~crab which~~ crabs that have been taken outside of Virginia waters by crab processing houses meeting the following conditions:

1. It shall be unlawful for any crab processing house to import or possess any dark sponge crabs from any other state or jurisdiction without first providing notice to the operations office of its intent to import dark sponge crabs.

2. Any crab processing house shall notify the operations office of its intent to import or possess dark sponge crabs from another state at least 24 hours in advance, either by telephone (1-757-541-4646 or 757-247-2265/2266) or by FAX (757-247-8026). Each crab processing house shall provide the operations office with their company name, manager's name, business location, phone number, quantity of crabs to be imported, source of crabs, arrival date, and approximate time.

3. Such imported crabs shall be accompanied by a bill of sale which shall include the name of the seller, address and phone number of the seller, the license number of the seller if such license is required in the jurisdiction of harvest, the date of sale, and the quantity of crabs sold or purchased under the bill of sale.

VA.R. Doc. No. R15-4385; Filed May 28, 2015, 1:18 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-42).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2015.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment increases the spiny dogfish commercial harvest quota from May 1, 2015, to April 30, 2016, to 5,463,565 pounds to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish.

4VAC20-490-42. Spiny dogfish commercial quota and catch limitations.

A. For the 12-month period of May 1, ~~2014~~ 2015, through April 30, ~~2015~~ 2016, the spiny dogfish commercial landings quota shall be limited to ~~5,329,492~~ 5,463,565 pounds.

B. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia any spiny dogfish harvested from federal waters for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

C. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia more than 5,000 pounds of spiny dogfish per day for commercial purposes.

D. It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

E. Any spiny dogfish harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted dealer.

F. It shall be unlawful for any buyer of seafood to receive any spiny dogfish after any commercial harvest or landing quota described in this section has been attained and announced as such.

VA.R. Doc. No. R15-4382; Filed May 28, 2015, 1:19 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-752. Pertaining to Blue Crab Sanctuaries (amending 4VAC20-752-20, 4VAC20-752-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2015.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) redefine the Virginia Blue Crab Sanctuary Area 1 as the Virginia Blue Crab Sanctuary Area 1A and the Virginia Blue Crab Sanctuary Area 1B and (ii) establish separate closure dates for Blue Crab Sanctuary Areas 1A, 1B, and Areas 2 through 4.

4VAC20-752-20. Definitions.

"COLREGS Line" means the COLREGS Demarcation Line, as defined in the Code of Federal Regulations (33 CFR 80.510 Chesapeake Bay Entrance, VA).

"Three Nautical Mile Limit" means the offshore limit of state waters within the belt three nautical miles wide that is adjacent to Virginia's coast and seaward of the mean low-water mark.

"Virginia Blue Crab Sanctuary" means ~~four~~ five distinct blue crab sanctuary areas as described below:

~~"Virginia Blue Crab Sanctuary Area 1" shall consist of all tidal waters of the Chesapeake Bay that are bounded by a line beginning at a point, near the western shore of Fishermans Island, Latitude 37° 05.9595000' N., Longitude 75° 58.7623333' W., being on a line from the Cape Charles Lighthouse to the Thimble Shoal Light; thence southwesterly to Thimble Shoal Light, Latitude 37° 00.8708333' N., Longitude 76° 14.3970000' W.; thence southwesterly to the Ocean View Fishing Pier (formerly Harrison's Fishing Pier) at a point 200 feet offshore of mean low water, Latitude 36° 57.6985477' N., Longitude 76° 15.5855211' W.; thence northerly to Flashing Green Buoy "9" on the York River Entrance Channel, Latitude 37° 11.4898333' N., Longitude 76° 15.7095000' W.; thence northeasterly to Wolf Trap Light, Latitude 37° 23.4185000' N., Longitude 76° 11.3673333' W.; thence northwesterly to a point, northeast of Windmill Point, Latitude 37° 38.3855000' N., Longitude 76° 15.9923333' W.; thence northerly to a point, east of Great Wicomico Light at Latitude 37º 48.2620000' N., Longitude 76º 14.5525000' W.; thence northeasterly to a point, Latitude 37º 49.3016667' N., Longitude 76º 13.1000000' W.; thence northeasterly to Smith Point Lighthouse, Latitude 37° 52.7925000' N., Longitude 76° 11.0250000' W.; thence northwesterly to a point on the Virginia - Maryland State Line, Latitude 37º 54.0831667' N., Longitude 76º 11.7493333' W.; thence northeasterly following the Virginia - Maryland State Line to a point on that line, Latitude 37° 55.7298333' N., Longitude 76° 17.2145000' W.; thence southeasterly to a point, southwest of Tangier Island, Latitude 37° 44.9975000' N., Longitude 76° 01.5718333' W.; thence southeasterly to a point, southeast of Tangier Island, Latitude 37° 43.6841667' N., Longitude 75° 57.8640000' W.; thence northeasterly to a point south of Watts Island, 37° 45.6158333' N., Longitude 75° 52.8978333' W.; thence southeasterly to a point, Latitude 37° 44.9358333' N., Longitude 75° 51.5530000' W.; thence southwesterly to a point west of Parkers Marsh, Latitude 37° 42.6915000' N., Longitude 75° 55.1051667' W.; thence southwesterly to a point west of Cape Charles Harbor, Latitude 37° 15.6205000' N., Longitude 76° 04.2298333' W.; thence southeasterly to a point near the western shore of Fishermans Island, on the line from Cape Charles Lighthouse to Thimble Shoal Light, said point being the point of beginning.~~

"Virginia Blue Crab Sanctuary Area 1A" shall consist of all tidal waters of the Chesapeake Bay that are bounded by a line beginning at a point, northeast of Windmill Point, Latitude 37° 38.3855000' N., Longitude 76° 15.9923333' W.; thence northerly to a point, east of Great Wicomico Light at Latitude 37° 48.2620000' N., Longitude 76º 14.5525000' W.; thence northeasterly to a point, Latitude 37° 49.3016667' N., Longitude 76° 13.1000000' W.; thence northeasterly to Smith Point Lighthouse, Latitude 37° 52.7925000' N., Longitude 76° 11.0250000' W.; thence northwesterly to a point on the Virginia-Maryland State Line, Latitude 37º 54.0831667' N., Longitude 76° 11.7493333' W.; thence northeasterly following the Virginia-Maryland State Line to a point on that line, Latitude 37° 55.7298333' N., Longitude 76° 7.2145000' W.; thence southeasterly to a point, southwest of Tangier Island, Latitude 37° 44.9975000' N., Longitude 76° 01.5718333' W.; thence southeasterly to a point, southeast of Tangier Island, Latitude 37° 43.6841667' N., Longitude 75° 57.8640000' W.; thence northeasterly to a point south of Watts Island, 37° 45.6158333' N., Longitude 75° 52.8978333' W.; thence southeasterly to a point, Latitude 37° 44.9358333' N., Longitude 75° 51.5530000' W.; thence southwesterly to a point west of Parkers Marsh, Latitude 37° 42.6915000' N., Longitude 75° 55.1051667' W; thence southwesterly to a point, northeast of Windmill Point, Latitude 37° 38.3855000'

N., Longitude 76° 15.9923333' W., said point being the point of beginning.

"Virginia Blue Crab Sanctuary Area 1B" shall consist of all tidal waters of the Chesapeake Bay that are bounded by a line beginning at a point, near the western shore of Fishermans Island, Latitude 37° 05.9595000' N., Longitude 75° 58.7623333' W., being on a line from the Cape Charles Lighthouse to the Thimble Shoal Light; thence southwesterly to Thimble Shoal Light, Latitude 37° 00.8708333' N., Longitude 76° 14.3970000' W.; thence southwesterly to the Ocean View Fishing Pier (formerly Harrison's Fishing Pier) at a point 200 feet offshore of mean low water, Latitude 36° 57.6985477' N., Longitude 76° 15.5855211' W.; thence northerly to Flashing Green Buoy "9" on the York River Entrance Channel, Latitude 37° 11.4898333' N., Longitude 76° 15.7095000' W.; thence northeasterly to Wolf Trap Light, Latitude 37° 23.4185000' N., Longitude 76° 11.3673333' W.; thence northwesterly to a point, northeast of Windmill Point, Latitude 37° 38.3855000' N., Longitude 76° 15.9923333' W.; thence northeasterly to a point west of Parkers Marsh, Latitude 37° 42.6915000' N., Longitude 75° 55.1051667' W.; thence southwesterly to a point west of Cape Charles Harbor, Latitude 37° 15.6205000' N., Longitude 76° 04.2298333' W.; thence southeasterly to a point near the western shore of Fishermans Island, Latitude 37° 05.9595000' N., Longitude 75° 58.7623333' W., being on the line from Cape Charles Lighthouse to Thimble Shoal Light, said point being the point of beginning.

"Virginia Blue Crab Sanctuary Area 2" shall consist of all tidal waters of the Chesapeake Bay that are bounded by a line beginning at the mean low water line of Willoughby Spit at its intersection with the center line of the Hampton Roads Bridge Tunnel facility, Latitude 36° 58.0456514' N., Longitude 76° 17.8459721' W.; thence in a northwesterly direction to a point 200 feet offshore of mean low water, Latitude 36° 58.0637717' N., Longitude 76° 17.8812821' W.; thence and following a line in a general easterly direction, said line being 200 feet offshore of the mean low water line, to a point on Ocean View Fishing Pier (formerly Harrison's Fishing Pier), Latitude 36° 57.6985477' N., Longitude 76° 15.5855211' W.; thence northeasterly to Thimble Shoal Light, Latitude 37° 00.8708333' N., Longitude 76° 14.3970000' W.; thence northeasterly to Cape Charles Lighthouse, Latitude 37° 07.3743333' N., Longitude 75° 54.3898333' W.; thence southwesterly along the COLREGS Line to its intersection with the mean low water line of Cape Henry, Latitude 36° 55.6885268' N., Longitude 76° 00.3772955' W.; thence, in a general westerly direction, following the mean low water line of the Chesapeake Bay, crossing the mouth of the Lynnhaven River along the north side of the Lesner Bridge and the Mouth of Little Creek at the offshore ends of the stone breakwaters and continuing along said mean low water line to a point at its intersection with the center line of the Hampton Roads Bridge Tunnel facility, said point being the point of beginning.

"Virginia Blue Crab Sanctuary Area 3" shall consist of all tidal waters of the Atlantic Ocean that are bounded by a line beginning at Cape Charles Lighthouse, Latitude 37° 07.3743333' N., Longitude 75° 54.3898333' W.; thence southwesterly along the COLREGS Line to Cape Henry Lighthouse, Latitude 36° 55.5840000' N., Longitude 76° 00.4321667' W.; thence easterly to a point on the Three Nautical Mile Limit, Latitude 36° 55.5436667' N., Longitude 75° 55.9015000' W.; thence northeasterly along the Three Nautical Mile Limit to a point, Latitude 37° 03.1915000' N., Longitude 75° 53.4503333' W.; thence northeasterly to a point, east of Cape Charles Lighthouse, Latitude 37° 06.7500000' N., Longitude 75° 52.0833333' W.; thence westerly to the Cape Charles Lighthouse, said point being the point of beginning.

"Virginia Blue Crab Sanctuary Area 4" shall consist of all tidal waters of the Atlantic Ocean that are bounded by a line beginning at a point on the Three Nautical Mile Limit, Latitude 36° 55.5436667' N., Longitude 75° 55.9015000' W.; thence southerly following the Three Nautical Mile Limit to an intersection point on the Virginia-North Carolina State Line, Latitude 36° 33.0224955' N., Longitude 75° 48.2662043' W.; thence westerly to a point along the Virginia-North Carolina State Line at its intersection with the mean low water line, Latitude 36° 33.0224003' N., Longitude 75° 52.0510498' W.; thence northerly, following the mean low water line to the Rudee Inlet weir; thence easterly along the weir to the stone breakwater; thence following the stone breakwater to its northernmost point; thence northerly to the mean low water line at the most northeastern point of the northern stone jetty; thence westerly along the mean low water line of said stone jetty to the mean low water line along the shore; thence northerly following the mean low water line to a point, Latitude 36° 55.5781102' N., Longitude 76° 00.1530758' W., said point being the intersection of the mean low water line with the line from Cape Henry Lighthouse easterly to a point on the Three Nautical Mile Limit, Latitude 36° 55.5436667' N., Longitude 75° 55.9015000' W., said point being the point of beginning.

4VAC20-752-30. Harvest restrictions.

A. It shall be unlawful for any person to conduct commercial or recreational crabbing within Virginia Blue Crab Sanctuary ~~Areas 1 and 3,~~ Area 1A from ~~May 16~~ June 1 through September 15.

B. It shall be unlawful for any person to conduct commercial or recreational crabbing within Virginia Blue Crab Sanctuary Area 1B from May 16 through September 15.

C. It shall be unlawful for any person to conduct commercial or recreational crabbing within Virginia Blue Crab Sanctuary Area 3 from May 9 through September 15.

~~B.~~ D. It shall be unlawful for any person to take, harvest, or possess crabs for commercial purposes from Virginia Blue Crab Sanctuary Areas 2 and 4~~,~~ from May ~~16~~ 9 through September 15.

VA.R. Doc. No. R15-4386; Filed May 28, 2015, 1:16 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-45).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2015.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment reduces the 2015 commercial scup summer period harvest quota to 13,646 pounds to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Scup.

4VAC20-910-45. Possession limits and harvest quotas.

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than 50,000 pounds of scup.

2. Land in Virginia more than a total of 50,000 pounds of scup during each consecutive seven-day landing period, with the first seven-day period beginning on January 1.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 18,000 pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to ~~14,105~~ 13,646 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 30 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 30. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R15-4390; Filed May 28, 2015, 1:14 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2015.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment establishes a fee of $150 for the one-day permit to relay condemned shellfish from a general oyster planting ground.

4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year. The fees listed below include a $1.00 agent fee.

1. COMMERCIAL LICENSES	
Commercial Fisherman Registration License	$190.00
Commercial Fisherman Registration License for a person 70 years or older	$90.00
Delayed Entry Registration.	$190.00
Delayed Entry Registration License for a person 70 years or older	$90.00
Seafood Landing License for each boat or vessel	$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	$83.00

Seafood Buyer's License -- For each boat or motor vehicle	$63.00
Seafood Buyer's License -- For each place of business	$126.00
Clam Aquaculture Product Owner's Permit	$10.00
Oyster Aquaculture Product Owner's Permit	$10.00
Clam Aquaculture Harvester's Permit	$5.00
Oyster Aquaculture Harvester's Permit	$5.00
Nonresident Harvester's License	$444.00
2. OYSTER RESOURCE USER FEES	
Any licensed commercial fisherman harvesting oysters by hand	$50.00
For any harvester using one or more gear types to harvest oysters or for any registered commercial fisherman who solely harvests or possesses any bushel limit described in 4VAC20-720-80, only one oyster resource user fee, per year, shall be paid	$300.00
On any business shucking or packing no more than 1,000 gallons of oysters	$500.00
On any business shucking or packing more than 1,000 but no more than 10,000 gallons of oysters	$1,000.00
On any business shucking or packing more than 10,000 but no more than 25,000 gallons of oysters	$2,000.00
On any business shucking or packing more than 25,000 gallons of oysters	$4,000.00
On any oyster buyer using a single truck or location	$100.00
On any oyster buyer using multiple trucks or locations	$300.00
Commercial aquaculture operation, on riparian assignment or general oyster planting grounds	$50.00
3. OYSTER HARVESTING, SHUCKING, <u>RELAY,</u> AND BUYERS LICENSES	
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with one boat or motor vehicle used for buying oysters	$50.00
Any person purchasing oysters caught from the public grounds of the Commonwealth or the Potomac River, for a single place of business with multiple boats or motor vehicles used for buying oysters	$100.00
For each person taking oysters by hand, or with ordinary tongs	$10.00
For each single-rigged patent tong boat taking oysters	$35.00
For each double-rigged patent tong boat taking oysters	$70.00
Oyster Dredge Public Ground	$50.00
Oyster Hand Scrape	$50.00
To shuck and pack oysters, for any number of gallons under 1,000	$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	$290.00
To shuck and pack oysters, for 200,000 gallons or over	$456.00
<u>One-day permit to relay condemned shellfish from a general oyster planting ground</u>	<u>$150.00</u>
4. BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES	
For each person taking or catching crabs by dip nets	$13.00
For ordinary trotlines	$13.00
For patent trotlines	$51.00
For each single-rigged crab-scrape boat	$26.00
For each double-rigged crab-scrape boat	$53.00
For up to 210 peeler pots	$36.00
For up to 20 tanks and floats for shedding crabs	$9.00
For more than 20 tanks or floats for shedding crabs	$19.00

For each crab trap or crab pound	$8.00
5. CRAB POT LICENSES	
For up to 85 crab pots	$48.00
For over 85 but not more than 127 crab pots	$79.00
For over 127 but not more than 170 crab pots	$79.00
For over 170 but not more than 255 crab pots	$79.00
For over 255 but not more than 425 crab pots	$127.00
6. HORSESHOE CRAB AND LOBSTER LICENSES	
For each person harvesting horseshoe crabs by hand	$16.00
For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	$41.00
For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	$166.00
7. CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake or with ordinary tongs	$24.00
For each single-rigged patent tong boat taking clams	$58.00
For each double-rigged patent tong boat taking clams	$84.00
For each boat using clam dredge (hand)	$19.00
For each boat using clam dredge (power)	$44.00
For each boat using hydraulic dredge to catch soft shell clams	$83.00
For each person taking surf clams	$124.00
8. CONCH (WHELK) HARVESTING LICENSES	
For each boat using a conch dredge	$58.00
For each person taking channeled whelk by conch pot	$51.00
9. FINFISH HARVESTING LICENSES	
Each pound net	$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	$24.00
All other gill nets up to 600 feet	$16.00
All other gill nets over 600 feet and up to 1,200 feet	$24.00
Each person using a cast net or throw net or similar device	$13.00
Each fyke net head, weir, or similar device	$13.00
For fish trotlines	$19.00
Each person using or operating a fish dip net	$9.00
On each haul seine used for catching fish, under 500 yards in length	$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	$146.00
For each person using commercial hook and line	$31.00
For each person using commercial hook and line for catching striped bass only	$31.00
For up to 100 fish pots or eel pots	$19.00
For over 100 but not more than 300 fish pots or eel pots	$24.00
For over 300 fish pots or eel pots	$62.00
10. MENHADEN HARVESTING LICENSES Any person purchasing more than one of the following licenses, as described in this subsection, for the same vessel, shall pay a fee equal to that for a single license for the same vessel.	
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden reduction sector	$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden reduction sector	$996.00
On each boat or vessel under 70 gross tons fishing for the purse seine menhaden bait sector	$249.00
On each vessel 70 gross tons or over fishing for the purse seine menhaden bait sector	$996.00
11. COMMERCIAL GEAR FOR RECREATIONAL USE	
Up to five crab pots	$36.00
Crab trotline (300 feet maximum)	$10.00
One crab trap or crab pound	$6.00
One gill net up to 300 feet in length	$9.00
Fish dip net	$7.00
Fish cast net	$10.00
Up to two eel pots	$10.00

12. SALTWATER RECREATIONAL FISHING LICENSE	
Individual, resident	$17.50
Individual, nonresident	$25.00
Temporary 10-Day, resident	$10.00
Temporary 10-Day, nonresident	$10.00
Recreational boat, resident	$48.00
Recreational boat, nonresident, provided a nonresident may not purchase a recreational boat license unless his boat is registered in Virginia	$76.00
Head Boat/Charter Boat, resident, six or less passengers	$190.00
Head Boat/Charter Boat, nonresident, six or less passengers	$380.00
Head Boat/Charter Boat, resident, more than six passengers, plus $5.00 per person, over six persons	$190.00
Head Boat/Charter Boat, nonresident, more than six passengers, plus $5.00 per person, over six persons	$380.00
Rental Boat, resident, per boat, with maximum fee of $703	$14.00
Rental Boat, nonresident, per boat, with maximum fee of $1270	$18.00
Commercial Fishing Pier (Optional)	$632.00
Disabled Resident Lifetime Saltwater License	$10.00
Disabled Nonresident Lifetime Saltwater License	$10.00
Reissuance of Saltwater Recreational Boat License	$5.00
13. COMBINED SPORTFISHING LICENSE This license is to fish in all inland waters and tidal waters of the Commonwealth during open season.	
Residents	$39.50
Nonresidents	$71.00
14. COMBINED SPORTFISHING TRIP LICENSE This license is to fish in all inland waters and tidal waters of the Commonwealth during open season for five consecutive days.	
Residents	$24.00
Nonresidents	$31.00
15. TIDAL BOAT SPORTFISHING LICENSE	
Residents	$126.00
Nonresidents	$201.00
16. LIFETIME SALTWATER RECREATIONAL FISHING LICENSES	
Individual Resident Lifetime License	$276.00
Individual Nonresident Lifetime License	$500.00
Individual Resident Lifetime License age 45 - 50	$132.00
Individual Nonresident Lifetime License age 45 - 50	$240.00
Individual Resident Lifetime License age 51 - 55	$99.00
Individual Nonresident Lifetime License 51 - 55	$180.00
Individual Resident Lifetime License age 56 - 60	$66.00
Individual Nonresident Lifetime License age 56 - 60	$120.00
Individual Resident Lifetime License age 61 - 64	$35.00
Individual Nonresident Lifetime License age 61 - 64	$60.00
Individual Resident Lifetime License age 65 and older	$5.00

VA.R. Doc. No. R15-4389; Filed May 28, 2015, 1:15 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1290. Pertaining to Restrictions on the Harvest of Shellfish and in Condemned Shellfish Areas (amending 4VAC20-1290-20, 4VAC20-1290-30; adding 4VAC20-1290-40, 4VAC20-1290-50).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: June 1, 2015.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish a daily restricted shellfish area relay permit for the harvest and relay of condemned shellfish from a general oyster planting ground within a restricted shellfish area.

4VAC20-1290-20. Definitions.

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

"Daily restricted shellfish area relay permit" means a one-day permit issued by the Marine Resources Commission for the relay of shellfish from a general oyster planting ground within a restricted shellfish area.

"Restricted shellfish area" means any area designated by the Virginia Department of Health, Division of Shellfish Sanitation, ~~in which it is~~ wherein it shall be unlawful for any person, firm, or corporation to take shellfish for any purpose except by permit granted by the Marine Resources Commission as provided in § 28.2-810 of the Code of Virginia.

"Prohibited shellfish area" means any area designated by the Virginia Department of Health, Division of Shellfish Sanitation, ~~in which it is~~ wherein it shall be unlawful for any person, firm, or corporation to take shellfish for any purpose.

4VAC20-1290-30. Restrict leasing of condemned shellfish areas.

All unassigned or vacant state-owned bottomland designated as a condemned shellfish area that is not assigned to or reserved for riparian owners prior to June 1, 2015, by the Virginia Department of Health, and classified as either restricted shellfish area or prohibited shellfish area for the direct harvest of shellfish, shall not be leased as general oyster planting grounds.

4VAC20-1290-40. Permit to relay shellfish from restricted shellfish areas.

A. It shall be unlawful to relay shellfish from a general oyster planting ground within a restricted shellfish area without first obtaining a daily restricted shellfish area relay permit from the Marine Resources Commission.

B. The daily restricted shellfish area relay permit shall be valid for only one calendar day of shellfish relay activities. Shellfish area relay activities authorized by issuance of a daily restricted shellfish area relay permit shall not begin before 6 a.m. and shall not extend beyond 6 p.m.

C. A daily restricted shellfish area relay permit shall only be issued to a lawfully licensed oyster aquaculture product owner permittee or a clam aquaculture product owner permittee.

D. Any person whose commercial fisherman registration license, oyster aquaculture product owner permit, or clam aquaculture product owner permit is currently revoked or rescinded by the Marine Resources Commission pursuant to § 28.2-232 or 28.2-528 of the Code of Virginia shall not be authorized to possess a daily restricted shellfish area relay permit. Any person who fails to pay at any time all fees, all costs, and the current annual rent for the general oyster planting ground identified for harvest or relay of shellfish shall be subject to either nonissuance or termination of that daily restricted shellfish area relay permit.

E. The daily restricted shellfish area relay permit shall include (i) the name, address, and telephone number of the permittee; (ii) the location of the Virginia Department of Health, Division of Shellfish Sanitation, restricted shellfish area; (iii) the general oyster planting ground lease numbers the shellfish will be harvested from; (iv) the location of the Virginia Department of Health, Division of Shellfish Sanitation approved relay area; (v) the general oyster planting ground lease numbers the shellfish will be planted on; (vi) the vessel identification for each vessel used to relay shellfish (Coast Guard documentation number, Virginia license number, or hull/VIN number); (vii) the vehicle identification number for each vehicle used to relay shellfish (Virginia license number or VIN number); (viii) the identification and address of any offloading location or facility; and (ix) if cages will be used and conform to the provisions established by 4VAC20-310, "Pertaining to the Relaying of Shellfish."

F. Any harvesting of shellfish from a restricted shellfish area, including any loading of vessels or vehicles, and planting of shellfish from a restricted shellfish area shall be conducted under Marine Resources Commission staff supervision. All scheduling of harvesting and planting of shellfish from a restricted shellfish area shall be determined by the marine police area supervisors based on the availability of Marine Resources Commission staff and weather conditions. Permittees shall notify the marine police supervisors of the restricted shellfish harvest area and corresponding planting area no later than one week before any restricted shellfish area relay activities can occur.

G. Upon approval of any daily restricted shellfish area relay permit and before issuance of said permit, the permittee shall pay the Marine Resources Commission a fee of $150.00 for each day of planned shellfish relay activities.

4VAC20-1290-50. Penalty.

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter, except 4VAC20-1290-40, shall be guilty of a Class 3 misdemeanor and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. As set forth in § 28.2-821 of the Code of Virginia, any person violating any provision of 4VAC20-1290-40 shall be guilty of a Class 1 misdemeanor.

VA.R. Doc. No. R15-4388; Filed May 28, 2015, 1:16 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

REGISTRAR'S NOTICE: The Criminal Justice Services Board is claiming an exclusion 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 where no agency discretion is involved. The Criminal Justice Services Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **6VAC20-260. Regulations Relating to Bail Enforcement Agents (amending 6VAC20-260-30, 6VAC20-260-230).**

Statutory Authority: §§ 9.1-102 and 9.1-186.2 of the Code of Virginia.

Effective Date: July 15, 2015.

Agency Contact: Lisa D. McGee, Regulatory Manager, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, telephone (804) 371-2419, FAX (804) 786-6344, or email lisa.mcgee@dcjs.virginia.gov.

Summary:

The amendments conform 6VAC20-260 to changes to the Code of Virginia enacted by Chapter 600 of the 2015 Acts of the Assembly and Chapter 84 of the 2014 Acts of Assembly. The amendments (i) reduce from 30 to 10 calendar days the time within which a bail enforcement agent must report changes to his name, residence, business name, or business address or any final administrative disposition, arrests or summonses issued, or criminal disposition and (ii) replace the acronym GED with "passed a high school equivalency examination approved by the Board of Education," which affects the eligibility requirements for bail enforcement agents.

Part III
Licensing Procedures and Requirements

6VAC20-260-30. Bail enforcement agent eligibility.

A. Persons required to be licensed pursuant to subdivision 47 of § 9.1-102 of the Code of Virginia as a bail enforcement agent shall meet all licensure requirements in this section. Persons who carry or have access to a firearm while on duty must have a valid license with a firearms endorsement as described under 6VAC20-260-80. If carrying a handgun concealed, the person must also (i) have a valid concealed handgun permit pursuant to Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia and (ii) the written permission of his employer ~~pursuant to § 18.2-308 of the Code of Virginia~~.

B. Each person applying for a bail enforcement agent license shall meet the minimum requirements for eligibility as follows:

1. Be a minimum of 21 years of age;

2. Be a United States citizen or legal resident alien of the United States;

3. Have received a high school diploma or ~~GED~~ passed a high school equivalency examination approved by the Board of Education; and

4. Have successfully completed all initial training requirements, including firearms endorsement if applicable, requested pursuant to the compulsory minimum training standards in Part IV (6VAC20-260-120 et seq.) of this ~~regulation~~ chapter.

C. The following persons are not eligible for licensure as a bail enforcement agent and may not be employed by or serve as agents for a bail enforcement agent:

1. Persons who have been convicted of a felony within the Commonwealth, any other state, or the United States, who have not been pardoned~~,~~ or whose civil rights have not been restored.

2. Persons who have been convicted of any misdemeanor within the Commonwealth, any other state, or the United States within the preceding five years. This prohibition may be waived by the department, for good cause shown, so long as the conviction was not for one of the following or a substantially similar misdemeanor: carrying a concealed weapon, assault and battery, sexual battery, a drug offense, driving under the influence, discharging a firearm, a sex offense, or larceny.

3. Persons who have been convicted of any misdemeanor within the Commonwealth, any other state, or the United States, that is substantially similar to the following: brandishing a firearm or stalking. The department may not waive the prohibitions under this subdivision.

4. Persons currently the subject of a protective order within the Commonwealth or another state.

5. Employees of a local or regional jail.

6. Employees of a sheriff's office or a state or local police department.

7. Commonwealth's attorneys and any employees of their offices.

8. Employees of the Department of Corrections, Department of Criminal Justice Services, or a local pretrial or community-based probation services agency.

D. The exclusions in subsection C of this section shall not be construed to prohibit law enforcement from accompanying a bail enforcement agent when he engages in bail recovery.

Part V
Recordkeeping Standards and Reporting Requirements

6VAC20-260-230. Reporting standards and requirements.

A. Each licensed bail enforcement agent shall (i) report within ~~30~~ 10 calendar days to the department any change in his residence, name, ~~or~~ business name, or business address, and (ii) ensure that the department has the names and fictitious names of all companies under which he carries out his bail recovery business.

B. Each licensed bail enforcement agent arrested or issued a summons for any crime shall report such fact within ~~30~~ 10 calendar days to the department and shall report to the department within ~~30~~ 10 days the facts and circumstances regarding the final disposition of his case.

C. Each licensed bail enforcement agent shall report to the department within ~~30~~ 10 calendar days of the final disposition any administrative action taken against him by another governmental agency in ~~this~~ the Commonwealth or in another jurisdiction. Such report shall include a copy of the order, consent to order, or other relevant legal documents.

D. Each licensed bail enforcement agent shall report to the department within 24 hours any event in which he discharges a firearm during the course of his duties.

E. The bail enforcement agent shall retain, for a minimum of three calendar years from the date of a recovery, copies of all written documentation in connection with the recovery of a bailee pursuant to 6VAC20-260-260.

VA.R. Doc. No. R15-4373; Filed May 20, 2015, 2:32 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC5-10. General Definitions (Rev. E-14) (amending 9VAC5-10-20).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

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

Federal Requirements: Section 109(a) of the federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a state implementation plan (SIP) that provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is a NAAQS, is in part created by emissions of volatile organic compounds (VOCs). Therefore, in order to control ozone, VOCs must be addressed in Virginia's SIP.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. Subpart F of Part 51, Procedural Requirements, includes § 51.100, which consists of a list of definitions. 40 CFR 51.100 contains a definition of VOC. This definition is revised by EPA in order to add or remove VOCs as necessary. If it can be demonstrated that a particular VOC is "negligibly reactive"--that is, if it can be shown that a VOC is not as reactive and therefore does not have a significant effect on ground-level or upper-level ozone--then EPA may remove that substance from the definition of VOC. On March 27, 2014 (79 FR 17037), EPA revised the definition of VOC to exclude 2-amino-2-methyl-1- propanol (also known as AMP), which became effective on June 25, 2014.

State Requirements: This specific amendment is not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A of the Code of Virginia). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300 of the Code of Virginia).

Purpose: The purpose of the general definitions section is not to impose any regulatory requirements in and of itself, but to provide a basis for and support to other provisions of the board's regulations for the control and abatement of air pollution, which are in place in order to protect public health and welfare. The proposed amendment is being made to ensure that the definition of VOC, which is crucial to most of the regulations, is up-to-date and scientifically accurate, as well as consistent with the overall EPA requirements under which the regulations operate.

Rationale for Using Fast-Track Process: The definition of VOC is being revised to add a less-reactive substance to the list of substances not considered to be VOCs. As discussed elsewhere, this amendment is not expected to affect a significant number of sources or have any significant impact, other than a positive one, on air quality overall. Additionally, removal of this substance at the federal level was accompanied by detailed scientific review and public

comment. Therefore, no additional information on the reactivity of this substance or the appropriateness of its removal is anticipated.

Substance: The general definitions impose no regulatory requirements in and of themselves but provide support to other provisions of the board's regulations for the control and abatement of air pollution. The list of substances not considered to be VOCs in Virginia has been revised to add 2-amino-2-methyl-1-propanol (also known as AMP).

Issues: The general public health and welfare will benefit because the revision may encourage the use of the delisted substance in place of products containing more reactive and thereby more polluting substances. This substance is considered to be negligibly reactive in the formation of ground level (tropospheric) ozone, will not deplete upper level (stratospheric) ozone, and is not considered to be a hazardous (toxic) air pollutant. Therefore, this substance does not have a negative effect on human health or the environment.

Excluding this substance as a VOC will make it easier and less expensive for industry to use it. Companies that use this substance in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements.

The amendment will allow the department to focus VOC reduction strategies on substances that have a negative impact on human health and the environment.

There are no known disadvantages to the public, the department, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to revise the definition of volatile organic compounds (VOC) to include 2-amino-2-methyl-1-propanol (also called AMP) on the list of compounds that are not considered to be VOC.

Result of Analysis. Benefits likely exceed costs for this proposed change.

Estimated Economic Impact. The general definitions of 9VAC5-10 do not impose any regulatory requirement by themselves, but they do help to clarify regulatory requirements in other parts of this regulation. The U.S. Environmental Protection Agency (EPA) has revised the federal definition of VOC to add AMP to the federal list of compounds that are not considered to be VOC because AMP makes a negligible contribution to tropospheric ozone formation relative to ethane (for which AMP may substitute in some manufacturing processes and products). Dow Chemical Company, in its petition to the EPA that resulted in AMP being excluded as a VOC, reports that AMP may be used in a variety of applications including use in pigments in water-based coatings, as an additive in metalworking fluids, in food contact paper, as a neutralizer in personal care products and as an intermediate compound in chemical synthesis. Board staff reports that there are no known facilities in Virginia that currently use AMP but that some manufacturers/facilities may start using it if it turns out to be directly less costly for them (if AMP is cheaper than compounds for which it substitutes) and/or indirectly less costly for them (in that it may allow them to avoid some pollution permit fee costs). Even though there are no known users of AMP in the state right now, it being listed as a non-VOC compound will benefit manufacturers that might have a use for it as they will have greater flexibility to lower their costs and possibly increase their profits. The general public may also benefit from this regulatory action as it gives manufacturers a less polluting compound that they can substitute for more polluting compounds in their manufacturing processes. To the extent that AMP is used instead of ethane or other, more polluting, substances, total pollution in the Commonwealth may be decreased.

Businesses and Entities Affected. Board staff reports that there are no known users of AMP in the state presently but that any entity that makes water-based coating, metalworking fluids or any of the other products in which AMP might potentially be used will be affected by this regulatory action.

Localities Particularly Affected. No localities will be particularly affected by this proposed regulatory change.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no immediate effect on the use or value of private property in the Commonwealth but may lower either direct or indirect manufacturing costs for entities that choose to use AMP in the future. To the extent that any firms costs are lowered, the value of that firm will likely increase.

Small Businesses: Costs and Other Effects. No affected small business is likely to incur costs on account of this proposed regulatory change.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No affected small business is likely to incur costs on account of this proposed regulatory change.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

• the projected number of businesses or other entities to whom the proposed regulation would apply,

• the identity of any localities and types of businesses or other entities particularly affected,

• the projected number of persons and employment positions to be affected,

• the projected costs to affected businesses or entities to implement or comply with the

regulation, and

• the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

• an identification and estimate of the number of small businesses subject to the proposed regulation,

• 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,

• a statement of the probable effect of the proposed regulation on affected small businesses,

and

• 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis and has no comment.

Summary:

The amendment revises the definition of volatile organic compound (VOC) to add 2-amino-2-methyl-1-propanol (also known as AMP) to the list of substances excluded from the definition of VOC.

9VAC5-10-20. Terms defined.

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

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

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

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

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

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

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

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

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

"Board" means the State Air Pollution Control Board or its designated representative.

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

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

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air

quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9VAC5-20-205.

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

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

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

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

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

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

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

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

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

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

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

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

"Dispersion technique"

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

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

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

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

2. ~~The preceding sentence~~ Subdivision 1 of this definition does not include:

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

b. The merging of exhaust gas streams where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hg = 2.5H,

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

b. For all other stacks,

Hg = H + 1.5L,

where:

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

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

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

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

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

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

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

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

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

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

"Mail" means electronic or postal delivery.

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

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due

to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Stack in existence" means that the owner had:

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

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

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

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

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

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

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

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

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

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

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from External Floating-

Roof Tanks" (see 9VAC5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

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

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

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

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

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

a. Methane;

b. Ethane;

c. Methylene chloride (dichloromethane);

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

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

f. Trichlorofluoromethane (CFC-11);

g. Dichlorodifluoromethane (CFC-12);

h. Chlorodifluoromethane (H CFC-22);

i. Trifluoromethane (H FC-23);

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

k. Chloropentafluoroethane (CFC-115);

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

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

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

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

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

q. Pentafluoroethane (HFC-125);

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

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

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

u. Parachlorobenzotrifluoride (PCBTF);

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

w. Acetone;

x. Perchloroethylene (tetrachloroethylene);

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

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

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

bb. Difluoromethane (HFC-32);

cc. Ethylfluoride (HFC-161);

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

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

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

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

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

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

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

kk. Chlorofluoromethane (HCFC-31);

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

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

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

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

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

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

rr. Methyl acetate;

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

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

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

vv. methyl formate ($HCOOCH_3$);

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

xx. propylene carbonate;

yy. dimethyl carbonate;

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

aaa. HCF_2OCF_2H (HFE-134);

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

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

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

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

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

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

~~ggg.~~ hhh. Perfluorocarbon compounds which fall into these classes:

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

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

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

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

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

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

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

5. The following compound is a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOCs and shall be uniquely identified in emission reports, but is not a VOC for purposes of VOC emission standards, VOC emissions limitations, or VOC content requirements: t-butyl acetate.

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

VA.R. Doc. No. R15-4073; Filed May 27, 2015, 11:17 a.m.

Fast-Track Regulation

Titles of Regulations: **9VAC5-20. General Provisions (Rev. C14) (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (Rev. C14) (amending 9VAC5-40-5220, 9VAC5-40-5270).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

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

Federal Requirements: Sections 109 (a) and (b) of the federal Clean Air Act (Act) require the U.S. Environmental Protection Agency (EPA) to prescribe primary and secondary air quality standards to protect public health and welfare for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Act. These standards are known as the National Ambient Air Quality Standards (NAAQS). Among the NAAQS specified by EPA under 40 CFR Part 50, ozone and its precursors (nitrogen oxides and volatile organic compounds) are included.

Section 110(a) of the Act mandates that each state adopt and submit to EPA a state implementation plan (SIP) which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The plan must establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the Act, establish schedules for compliance, prohibit emissions that would contribute to nonattainment of the standards or interfere with maintenance of the standards by any state, and require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

Part D of the Act specifies state implementation plan requirements for nonattainment areas, with Subpart 1 covering nonattainment areas in general and Subpart 2 covering additional provisions for ozone nonattainment areas. Ozone nonattainment areas are further classified, depending on the severity of their ozone pollution problem, as marginal, moderate, serious, severe, and extreme, with correspondingly more stringent requirements imposed as the classification level increases.

Section 172(a) of the Act authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) of the Act authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) of the Act specifies the provisions to be included in each attainment plan, including the implementation of all reasonably available control measures as expeditiously as practicable.

Part D, Subpart 2, § 182(a)(2)(A) of the Act requires that the existing regulatory program requiring reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) in marginal nonattainment areas be corrected by May 15, 1991, to meet the minimum requirements in existence prior to the enactment of the 1990 amendments. RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. EPA has published control technology guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) of the Act requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. The additional, more comprehensive control measures in § 182(b)(2)(A) require that each category of VOC sources employ RACT if the source is covered by a CTG document issued between enactment of the 1990 amendments and the attainment date for the nonattainment area. Section 182(b)(2)(B) requires that existing stationary sources emitting VOCs for which a CTG existed prior to adoption of the 1990 amendments also employ RACT. Section 182(b)(3) requires the implementation of Stage II vapor recovery in ozone nonattainment and maintenance areas.

As required by § 182(b)(3) of the Act, all gasoline dispensing facilities in moderate or worse nonattainment areas with a gasoline throughput of more than 10,000 gallons per month must install Stage II vapor recovery systems to prevent gasoline vapors from escaping to the atmosphere during motor vehicle fueling.

Section 182(b)(3) of the Act also allows for an exemption for independent small business marketers of gasoline that sell less than 50,000 gallons per month. An independent small business marketer of gasoline is a person engaged in the marketing of gasoline that would be required to pay for procurement and installation of Stage II vapor recovery equipment under § 324 of the Act; this definition does not apply if the marketer is a refiner or is affiliated with a refiner. Section 324 contains additional specific provisions relating to Stage II vapor recovery for small business marketers (independents) of gasoline. According to § 324(a) of the Act, independently owned facilities with a gasoline throughput of 50,000 gallons per month or more are allowed an extended three-year phase-in period for installation of Stage II vapor recovery systems. Section 324(a) reiterates the exemption for independently owned facilities with a throughput of less than 50,000 gallons per month; however, § 324(b) of the Act states that nothing in § 324 can prohibit any state from adopting or enforcing a Stage II regulation for independents having monthly sales of less than 50,000 gallons per month.

As required by § 182(b)(3)(B) of the Act, the compliance date for installing Stage II vapor recovery systems for gasoline dispensing facilities built after the effective date of the state's Stage II regulation is six months after that regulation's effective date. Facilities that dispense 100,000 gallons of gasoline or more per month are required to install Stage II vapor recovery systems no later than one year after the effective date of the state's regulation. All other gasoline dispensing facilities must be in compliance no later than two years after the effective date of the state's Stage II regulation.

Section 182(c) of the Act requires that program requirements for moderate nonattainment areas be applicable in serious nonattainment areas.

Section 184 of the Act establishes the Ozone Transport Region (OTR), which includes several northeast states and portions of northern Virginia, and imposes additional ozone control requirements specific to the region.

Section 202(a)(6) of the Act provides that after the regulation requiring onboard refueling vapor recovery (ORVR) systems for new vehicles is adopted by EPA, Stage II controls will no longer be required in moderate nonattainment areas, and Stage II controls may be waived for serious, severe, and extreme nonattainment areas when the EPA Administrator determines that onboard controls are in widespread use throughout the U.S. motor vehicle fleet.

These provisions of the Act are implemented through federal regulations at 40 CFR Part 51, which sets out general requirements for the preparation, adoption, and submittal of SIPs. Other than what is specified in the Act, there are no specific regulatory requirements governing Stage II vapor recovery programs; the details of such programs were left to the states.

Beginning with model year 1998, ORVR equipment has been phased in for new vehicles, and has been a required control on nearly all new highway vehicles since 2006. Over time, non-ORVR vehicles will continue to be replaced with ORVR vehicles. Stage II and ORVR emission control systems are redundant, and EPA has determined that emission reductions from ORVR are essentially equal to and will soon surpass the emission reductions achieved by Stage II alone. On May 16, 2012 (77 FR 28772), EPA eliminated the largely redundant Stage II requirement in order to ensure that refueling vapor control regulations are beneficial without being unnecessarily burdensome to American business. This action allows, but does not require, states to discontinue Stage II vapor recovery programs.

State Requirements: Section 10.1-1300 of the Code of Virginia defines pollution as "the presence in the outdoor

atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Excess emissions from petroleum liquid storage and transfer operations are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Section 10.1-1307 A of the Code of Virginia provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Section 10.1-1308 of the Code of Virginia provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act.

Purpose: The purpose of this action is to amend the Emission Standards for Petroleum Liquid Storage and Transfer Operations regulation for volatile organic compounds such that Stage II vapor recovery systems are no longer required in the Northern Virginia Ozone Transport Region, and will not be required in the Richmond ozone maintenance area beginning on January 1, 2017. The amendments protect the health, safety, or welfare of citizens of the Commonwealth by removing requirements that have been determined to no longer be necessary to protect the environment, resulting in costs savings for affected business owners. Also, the general public will enjoy greater air quality protection, as the incompatibility between Stage II and ORVR will be eliminated.

Emissions of VOCs from the refueling of motor vehicles are controlled in two ways: Stage II fuel pumps and ORVR systems that are directly integrated into an individual motor vehicle.

Gasoline dispensing facilities store fuel in underground storage tanks (USTs), which is then dispensed to individual vehicle fuel tanks. As a vehicle tank fills, the liquid gasoline displaces a commensurate amount of vapor that contains air and VOCs. Stage II vapor recovery, which is integrated into the gasoline pumping mechanism, captures the displaced vapor and returns it to the UST, where it either condenses to liquid form or is removed and transported to the fuel terminal by tanker refueling trucks. Fuel terminals vent the vapors to either a vapor combustion system, where the vapors are destroyed via oxidation, or a vapor recovery system, where the vapors are captured and regenerated as a liquid via carbon bed technology.

ORVR is a system found in gasoline-powered motor vehicles to capture gasoline vapors displaced from the vehicle fuel tank when it is being refueled. An onboard vapor recovery system consists of an activated carbon canister that captures the displaced vapor during refueling. A portion of the engine intake air then regenerates the carbon, and the hydrocarbons burn as fuel in the engine. Federal regulations now require on-board vapor recovery on all gasoline-powered passenger cars, light trucks, and complete heavy trucks of less than 14,000 pounds gross vehicle weight rating.

Stage II and ORVR do not always work together properly. When refueling an ORVR-equipped vehicle with a vacuum assist-type Stage II equipped dispenser, compatibility problems may result in an increase in emissions from the UST vent pipe and other system fugitive emissions. In an ORVR-equipped vehicle, the liquid seal in the fill pipe blocks the vapor flow from the vehicle fuel tank, and fresh air drawn into the UST enhances gasoline evaporation in the UST. This additional evaporation increases pressure in the UST, and as tank pressure exceeds the rating of the pressure/vacuum valve, the valve allows vapor to escape. Balance-type and certain vacuum assist-type Stage II dispensers are compatible with ORVR and do not cause these excess emissions.

EPA recognizes this incompatibility problem, and the Clean Air Act has always contemplated Stage II becoming superseded by ORVR in some circumstances--hence EPA's determination of widespread use and waiver of the Stage II requirement.

Two Virginia areas have been subject to Stage II requirements: the Richmond ozone maintenance area, and the Northern Virginia ozone nonattainment area (which generally corresponds to the Ozone Transport Region). The department examined whether Stage II is still necessary for ozone control purposes and has determined that Stage II is no longer needed in these areas' attainment and maintenance plans, which are approved into the Virginia State Implementation Plan (SIP). The department has also determined that ORVR will be in widespread use in the Richmond area by January 1, 2017, and became in widespread use in Northern Virginia OTR as of January 1, 2014. Because Stage II is no longer needed for the control of ozone in these areas, Virginia submitted amendments to effect its removal from the SIP on November 12, 2013 (for Richmond), and on March 19, 2014 (for Northern Virginia). These SIP revisions satisfy all Clean Air Act and EPA requirements regarding the removal of Stage II vapor recovery system requirements. Virginia's specific Stage II requirements are found in Article 37 of 9VAC5-40, and must now be amended accordingly.

Rationale for Using Fast-Track Process: In compliance with the federal Clean Air Act and EPA guidance, the department undertook an analysis to determine whether Stage II controls were needed in order to attain and maintain the ozone NAAQS; the results of this analysis demonstrated that the removal of Stage II will not have an impact on ozone emissions and is therefore no longer needed. The department then developed appropriate amendments to the SIP, which underwent public comment for federal SIP purposes. No comments were received from the public, and EPA actively supports the removal of this program as appropriate from SIPs. As discussed in greater detail elsewhere, the removal of

Stage II controls is expected to have a positive economic and public health impact. Because a cost benefit will be realized at no expense of air quality, it is not expected that this action will be controversial.

Substance: Stage II will no longer be mandatory in the Northern Virginia ozone nonattainment area because ORVR has been in widespread use as of January 1, 2014. Stage II will no longer be mandatory in the Richmond ozone maintenance area as of January 1, 2017, as that is the date when ORVR will be in widespread use. Facilities decommissioning their Stage II equipment are required to meet certain decommissioning requirements in order to protect Stage I controls, and facilities that elect to continue to use Stage II must continue to operate and maintain the Stage II equipment properly.

Issues: The general public will enjoy greater air quality protection, as the incompatibility between Stage II and ORVR will be eliminated. Gasoline dispensing facilities will benefit from no longer having to install and maintain unnecessary pollution control equipment. The manufacturers of Stage II equipment and other ancillary Stage II installation and maintenance businesses will not see a negative impact even though there will no longer be a market for these devices in Virginia because they are selling replacement equipment and maintenance services and providing maintenance services through the transition period as facilities decommission. There are no disadvantages to the public.

The department will no longer need to inspect gasoline dispensing facilities to ensure the proper installation and operation of Stage II equipment. This will enable department compliance staff to direct resources to facilities that have more of a direct impact on air pollution and public health. There are no disadvantages to the department or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will no longer require gas stations in Northern Virginia (effective immediately) and Richmond (effective January 1, 2017) ozone nonattainment areas to employ Stage II vapor recovery systems.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The proposed changes will no longer require gas stations in Northern Virginia (effective immediately) and Richmond (effective January 1, 2017) ozone nonattainment areas to employ Stage II vapor recovery systems. A Stage II system is made of special nozzles and hoses that capture vapors from the vehicle's fuel tank during refueling process and route them to an underground storage tank (UST). Simply put, the system replaces the volume of dispensed gas in UST with the commensurate amount of incoming vapors from the vehicles gas tank preventing emission of the vapors into the atmosphere.

The proposed change is prompted by the determination of the U.S. Environmental Protection Agency that the onboard refueling vapor recovery (ORVR) system is in widespread use throughout the country. In an ORVR system, the gas tank and the fill pipe are designed so that when refueling the vehicle, fuel vapors in the gas tank travel to an activated carbon packed canister, which absorbs the vapor. When the engine is in operation, the system feeds vapors into the engine intake manifold to be used as fuel.

Both Stage II and ORVR try to accomplish the same goal. However, they do not always work together properly. When refueling an ORVR-equipped vehicle with a vacuum assist-type Stage II equipped dispenser, compatibility problems may result in an increase in emissions from the UST vent pipe and other system fugitive emissions. In an ORVR-equipped vehicle, the liquid seal in the fill pipe blocks the vapor flow from the vehicle fuel tank, and fresh air drawn into the UST enhances gasoline evaporation in the UST. This additional evaporation increases pressure in the UST, and as tank pressure exceeds the rating of the pressure/vacuum valve, the valve allows vapor to escape. According to the Department of Environmental Quality (DEQ), EPA recognizes this incompatibility problem, and the Clean Air Act has always contemplated Stage II becoming superseded by ORVR in some circumstances; hence, EPA's determination of widespread use and waiver of the Stage II requirement.

Two Virginia areas have been subject to Stage II requirements: the Richmond ozone maintenance area, and the northern Virginia ozone nonattainment area. DEQ examined whether Stage II is still necessary for ozone control purposes and has determined that ORVR will be in widespread use in the Richmond area by January 1, 2017, and became in widespread use in northern Virginia/OTR as of January 1, 2014. Because Stage II is no longer needed for the control of ozone in these areas, Virginia submitted amendments to effect its removal from the state implementation plan (SIP). These SIP revisions satisfy all Clean Air Act and EPA requirements regarding the removal of Stage II vapor recovery system requirements.

The determination of widespread use is critical. In the absence of a Stage II system, older vehicles not equipped with ORVR will cause emissions of vapors during the refueling process. On the other hand, newer vehicles equipped with ORVR will not cause emissions of vapors during the refueling process due to elimination of the incompatibility of the two systems. If ORVR system is in widespread use, avoidance of vapor emissions from newer cars would balance out or exceed the emissions of vapors from older vehicles. Thus, the determination of widespread use of ORVR implies that elimination of Stage II system would reduce or would not increase emissions of vapors at the aggregate during the refueling process. If a reduction in emissions of gasoline vapor is achieved, it would reduce ozone pollution and would be environmentally beneficial for the Commonwealth.

The proposed change will eliminate installation and maintenance costs associated with Stage II systems for future gas stations that would have otherwise been required to install a Stage II vapor recovery system.

In addition, approximately 1,174 gasoline stations currently in Richmond and northern Virginia areas will no longer have to incur maintenance costs for their Stage II systems if they choose to decommission their system. While decommissioning of Stage II would present a one-time expense to the gas stations, they would no longer incur ongoing maintenance costs. EPA estimates that removal of Stage II systems will produce $333 savings per gas station in the first year, $1,323 in the second year, $2,316 in the third year, and $2,973 per year in the longer term.[1]

Since the use of ORVR is already determined to be widespread in northern Virginia, 681 gas stations will start realizing savings immediately after the proposed changes go in effect. These savings are estimated to be cumulatively $227,000 in the first year after the proposed change becomes effective, $901,323 in the second year, $1.5 million the third year, and $2 million every year thereafter. The use of ORVR will be widespread in 2017 in Richmond area. Thus, 493 gas stations in Richmond area will start realizing cumulatively $164,133 savings in 2017, $652,500 savings in 2018, $1.1 million savings in 2019, and $1.4 million savings annually thereafter based on EPA's cost estimates.

Additional administrative cost savings are also expected. DEQ expects $92,980 savings annually after implementation based on the assumptions that a routine Stage II inspection takes approximately 2 hours to conduct, inspectors are paid approximately $39.60 per hour, and there are 1,174 gas stations affected. Similarly, gas stations will likely experience some administrative cost savings associated with no longer having Stage II system inspections conducted by DEQ.

Businesses and Entities Affected. The proposed change will no longer require approximately 681 gasoline stations in the northern Virginia ozone nonattainment area effective immediately and 493 gas stations in the Richmond ozone maintenance area effective January 1, 2017, to operate a Stage II vapor recovery system.

Localities Particularly Affected. The portions of the Richmond ozone maintenance area subject to Stage II are the counties of Charles City, Chesterfield, Henrico, and Hanover and the cities of Colonial Heights, Hopewell, and Richmond; Prince George County and Petersburg City are exempt from Stage II. The northern Virginia ozone nonattainment area consists of the counties of Stafford, Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Projected Impact on Employment. The proposed change will likely create some demand for labor to decommission Stage II vapor recovery system in the first few years while reducing demand for labor to install new Stage II systems that would have otherwise been taking place. In the longer term, the proposed change should reduce demand for labor associated with maintenance of Stage II systems.

Effects on the Use and Value of Private Property. The proposed change will provide savings to gas station owners and should have a positive impact on their asset values. However, a reduction in demand for Stage II systems is expected. A reduction in demand for these systems would have a negative revenue impact on their manufacturers, distributors, and installers.

Small Businesses: Costs and Other Effects. Most if not all of the affected 1,174 gas stations are believed to be small businesses. The costs and other effects on them are the same as discussed above. Similarly, some of the manufacturers, distributors, and installers of Stage II systems may be small businesses and may experience a reduction in their revenues.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that minimize the adverse impact while accomplishing the same goals.

Real Estate Development Costs. No longer requiring a Stage II vapor recovery system, may make it easier for entrepreneurs to start a gas station business and may promote development of real estate for that purpose.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and

• 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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[1]Federal Register/Vol. 77, No.95/Page 28772/May 16, 2012.

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

Summary:

Under the proposed amendments, gas stations in Northern Virginia (effective immediately) and Richmond (effective January 1, 2017) ozone nonattainment areas will no longer be required to employ Stage II vapor recovery systems.

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2013)~~ (2014) in effect July 1, ~~2013~~ 2014. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50 -- National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A-1 -- Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method).

(b) Appendix A-2 -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(c) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(d) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(e) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(f) Appendix E -- Reserved.

(g) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(h) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(i) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(j) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(k) Appendix J -- Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere.

(l) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(m) Appendix L -- Reference Method for the Determination of Fine Particulate Matter as $PM_{2.5}$ in the Atmosphere.

(n) Appendix M -- Reserved.

(o) Appendix N -- Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$.

(p) Appendix O -- Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(q) Appendix P -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(r) Appendix Q -- Reference Method for the Determination of Lead in Suspended Particulate Matter as PM_{10} Collected from Ambient Air.

(s) Appendix R -- Interpretation of the National Ambient Air Quality Standards for Lead.

(t) Appendix S -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

(u) Appendix T -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide).

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

(b) Appendix S -- Emission Offset Interpretive Ruling.

(c) Appendix W -- Guideline on Air Quality Models (Revised).

(d) Appendix Y -- Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations.

(4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A -- Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(5) 40 CFR Part 59 -- National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

(a) Subpart C -- National Volatile Organic Compound Emission Standards for Consumer Products.

(b) Subpart D -- National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.

(6) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources).

(7) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(8) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(9) 40 CFR Part 64 -- Compliance Assurance Monitoring.

(10) 40 CFR Part 72 -- Permits Regulation.

(11) 40 CFR Part 73 -- Sulfur Dioxide Allowance System.

(12) 40 CFR Part 74 -- Sulfur Dioxide Opt-Ins.

(13) 40 CFR Part 75 -- Continuous Emission Monitoring.

(14) 40 CFR Part 76 -- Acid Rain Nitrogen Oxides Emission Reduction Program.

(15) 40 CFR Part 77 -- Excess Emissions.

(16) 40 CFR Part 78 -- Appeal Procedures for Acid Rain Program.

(17) 40 CFR Part 152 Subpart I -- Classification of Pesticides.

(18) 49 CFR Part 172 -- Hazardous Materials Table. Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

(19) 29 CFR Part 1926 Subpart F -- Fire Protection and Prevention.

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency" (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this subdivision may be obtained online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/index.html. Copies of the document identified in subdivision E 2 a (3) of this subdivision are only available online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/emc/guidlnd.html.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.

b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

15. Petroleum Equipment Institute.

a. The following document from the Petroleum Equipment Institute is incorporated herein by reference: Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09 (2009).

b. Copies may be obtained from: Petroleum Equipment Institute, 6931 S. 66th E. Avenue, Suite 310, Tulsa, OK 74133; telephone (918) 494-9696; www.pei.org.

9VAC5-40-5220. Standard for volatile organic compounds.

A. Petroleum liquid storage-fixed roof tanks.

1. No owner or other person shall use or permit the use of any fixed roof tank of more than 40,000 gallons capacity for storage of petroleum liquids, unless such tank is equipped with a control method ~~which~~ that will remove, destroy, or prevent the discharge into the atmosphere of at least 90% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision 1 of this subsection by use of methods in 9VAC5-40-5230 A will be acceptable to the board.

3. The provisions of this subsection shall not be applicable to fixed roof tanks having capacities less than 400,000 gallons for crude oil or condensate stored, processed, or treated at a drilling and production facility prior to custody transfer.

4. The owner of a fixed roof tank subject to the provisions of subdivision 1 of this subsection shall:

a. When the fixed roof tank is equipped with an internal floating roof, perform a visual inspection annually of the floating cover through roof hatches~~,~~ to ascertain compliance with the specifications in subdivisions ~~4 a~~ (1) and (2) of this ~~subsection~~ subdivision A 4 a.

(1) The cover should be uniformly floating on or above the liquid and there should be no visible defects in the surface of the cover or liquid accumulated on the cover.

(2) The seal must be intact and uniformly in place around the circumference of the cover between the cover and tank wall.

b. Perform a complete inspection of the cover and seal and record the condition of the cover and seal when the tank is emptied for nonoperational reasons such as maintenance, an emergency, or other similar purposes.

c. Maintain records of the throughput quantities and types of petroleum liquids stored, the average monthly storage temperature and true vapor pressure of the liquid

as stored, and the results of the inspections performed under the provisions of subdivisions 4 a and 4 b of this subsection.

B. Petroleum liquid storage--floating roof tanks.

1. No owner or other person shall use or permit the use of any floating roof tank of more than 40,000 gallons capacity for storage of petroleum liquids, unless such tank is equipped with a control method ~~which~~ that will remove, destroy, or prevent the discharge into the atmosphere of at least 90% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision 1 of this subsection by use of methods in 9VAC5-40-5230 B will be acceptable to the board.

3. The provisions of this subsection shall not be applicable to the following:

a. Floating roof tanks having capacities less than 400,000 gallons for crude oil or condensate stored, processed, or treated at a drilling and production facility prior to custody transfer.

b. Floating roof tanks storing waxy, heavy pour crude oil.

4. The owner of a floating roof tank subject to the provisions of subdivision 1 of this subsection shall:

a. Perform routine inspections annually which shall include a visual inspection of the secondary seal gap.

b. When the floating roof is equipped with a vapor-mounted primary seal, measure the secondary seal gap annually in accordance with subdivisions ~~4 b~~ (1) and (2) of this ~~subsection~~ subdivision B 4 b.

(1) Physically ~~measuring~~ measure the length and width of all gaps around the entire circumference of the secondary seal in each place where a 1/8-inch uniform diameter probe passes freely (without forcing or binding against the seal) between the seal and tank wall; and

(2) ~~Summing~~ Sum the area of the individual gaps.

c. Maintain records of the types of petroleum liquids stored, the maximum true vapor pressure of the liquid as stored, and the results of the inspections performed under the provisions of subdivisions ~~4~~ a and b of this ~~subsection~~ subdivision B 4.

C. Gasoline bulk loading--bulk terminals.

1. No owner or other person shall cause or permit the discharge into the atmosphere from a bulk gasoline terminal (including any appurtenant equipment necessary to load the tank truck compartments) any volatile organic compound in excess of .67 pounds per 1,000 gallons of gasoline loaded.

2. Achievement of the emission standard in subdivision 1 of this subsection by use of methods in 9VAC5-40-5230 C will be acceptable to the board.

D. Gasoline bulk loading--bulk plants.

1. No owner or other person shall use or permit the use of any bulk gasoline plant (including any appurtenant equipment necessary to load or unload tank trucks and account trucks) unless such plant is equipped with a vapor control system that will remove, destroy, or prevent the discharge into the atmosphere of at least 77% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision 1 of this subsection by use of methods in 9VAC5-40-5230 D will be acceptable to the board.

3. The provisions of this subsection shall not be applicable to facilities whose average daily throughput of gasoline is less than 4,000 gallons per working day when based on a 30-day rolling average. Average daily throughput means the average daily amount of gasoline pumped at a gasoline dispensing facility during the most recent 30-day period. Average daily throughput shall be calculated for the two most recent consecutive calendar years. If during this two-year period or any period thereafter, the average daily throughput exceeds 4,000 gallons per working day, the facility is no longer exempt from the provisions of subdivision 1 of this subsection.

E. Transfer of gasoline--gasoline dispensing facilities--Stage I vapor control systems.

1. No owner or other person shall transfer or permit the transfer of gasoline from any tank truck into any stationary storage tank unless such tank is equipped with a vapor control system that will remove, destroy, or prevent the discharge into the atmosphere of at least 90% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision 1 of this subsection by use of methods in 9VAC5-40-5230 E will be acceptable to the board.

3. The provisions of this subsection shall not apply to the following:

a. Transfers made to storage tanks that are either less than 250 gallons in capacity or located at facilities whose average monthly throughput of gasoline is less than 10,000 gallons.

b. Transfers made to storage tanks equipped with floating roofs or their equivalent.

F. Transfer of gasoline--gasoline dispensing facilities--Stage II vapor recovery systems.

1. No owner or other person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any affected gasoline dispensing facility unless the transfer is made using a certified Stage II vapor recovery system that is designed, operated, and maintained such that the vapor recovery system removes, destroys, or prevents the discharge into the atmosphere of at least 95% by weight of volatile organic compound emissions.

2. Achievement of the emission standard in subdivision 1 of this subsection by use of methods in 9VAC5-40-5230 F will be acceptable to the board.

3. The affected gasoline facilities shall be in compliance with the emissions standard in subdivision 1 of this subsection according to the following schedule:

a. Facilities which begin actual construction on or after January 1, 1993, must comply upon startup unless the facility can prove it is exempt under the provisions of subdivision 4 of this subsection.

b. Facilities which begin actual construction after November 15, 1990, and before January 1, 1993, must comply by May 15, 1993.

c. Facilities which begin actual construction on or before November 15, 1990, and dispense an average monthly throughput of 100,000 gallons or more of gasoline must comply by November 15, 1993.

d. All other affected facilities which begin actual construction on or before November 15, 1990, must comply by November 15, 1994.

4. The provisions of this subsection shall not apply to the following facilities:

a. Gasoline dispensing facilities with an average monthly throughput of 10,000 gallons or less.

b. Gasoline dispensing facilities owned by independent small business gasoline marketers with an average monthly throughput of 50,000 gallons or less.

c. Gasoline dispensing devices that are used exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles.

5. Any gasoline dispensing facility subject to the provisions of this subsection shall also comply with the provisions of subsection E of this section (Stage I vapor controls).

6. In accordance with the provisions of AQP-9, Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities (see 9VAC5-20-121), owners of affected gasoline dispensing facilities shall:

a. Register the Stage II system with the board and submit Stage II vapor recovery equipment specifications at least 90 days prior to installation of the Stage II vapor recovery system. Owners of gasoline dispensing facilities in existence as of January 1, 1993, shall contact the board by February 1, 1993, and register the Stage II vapor recovery system according to the schedule outlined in AQP-9. Any repair or modification to an existing Stage II vapor recovery system that changes the approved configuration shall be reported to the board no later than 30 days after completion of such repair or modification.

b. Perform tests, before the equipment is made available for use by the public, on the entire Stage II vapor recovery system to ensure the proper functioning of nozzle automatic shut-off mechanisms and flow prohibiting mechanisms where applicable, and perform a pressure decay/leak test, a vapor space tie test, and a liquid blockage test. In cases where use of one of the test methods in AQP-9 is not feasible for a particular Stage II vapor recovery system, the owner may, upon approval of the board, use an alternative test method.

c. No later than 15 days after system testing is completed, submit to the board documentation showing the results of the tests outlined in subdivision 6 b of this subsection.

d. Ensure that the Stage II vapor recovery system is vapor tight by performing a pressure decay/leak test and a liquid blockage test at least every five years, upon major system replacement or modification, or if requested by the board after evidence of a system malfunction which compromises the efficiency of the system.

e. Notify the board at least two days prior to Stage II vapor recovery system testing as required by subdivisions 6 b and 6 d of this subsection.

f. Conspicuously post operating instructions for the vapor recovery system on each gasoline dispensing pump which includes the following information:

(1) A statement, as described in Part III F 1 of AQP-9 (see 9VAC5-20-121), describing the benefits of the Stage II vapor recovery system.

(2) A clear description of how to correctly dispense gasoline with the vapor recovery nozzles.

(3) A warning that repeated attempts to continue dispensing gasoline~~,~~ after the system has indicated that the vehicle fuel tank is full (by automatically shutting off) may result in spillage or recirculation of gasoline.

(4) A telephone number to report problems experienced with the vapor recovery system to the board.

g. Promptly and conspicuously post "Out Of Order" signs on any nozzle associated with any part of the vapor recovery system ~~which~~ that is defective if use of that nozzle would allow escape of gasoline vapors to the atmosphere. "Out of order" signs shall not be removed from affected nozzles until said system has been repaired.

h. Provide adequate training and written instructions for facility personnel to assure proper operation of the vapor recovery system.

i. Perform routine maintenance inspections of the Stage II vapor recovery system on a daily and monthly basis and record the monthly inspection results as specified in Part III E of AQP-9 (see 9VAC5-20-121).

j. Maintain records on site, in a form and manner acceptable to the board, of operator training, system registration and equipment approval, and maintenance,

repair and testing of the system. Original documents may be maintained at a centralized location only if copies of these documents are maintained onsite according to the requirements set forth in AQP-9. Records shall be retained for a period of at least two years, unless specified otherwise, and shall be made immediately available for inspection by the board upon request.

7. The requirements of this subsection shall apply to the localities specified in 9VAC5-40-5200 B 2 until the following dates, after which the decommissioning or maintenance requirements of subdivision 8 or 9 of this subsection shall be followed.

a. For the Northern Virginia Volatile Organic Compound Control Area: January 1, 2014.

b. For the Richmond Volatile Organic Compound Control Area (which shall not include Prince George County and Petersburg City): January 1, 2017.

8. No owner or other person decommissioning any Stage II equipment shall be relieved from the continuing proper operation and maintenance of Stage I vapor control systems. In order to assure the proper operation and maintenance of Stage I equipment, all of the Stage II decommissioning procedures in this subdivision F 8 shall be completed:

a. Notify the board in writing prior to removing or discontinuing all or part of an existing Stage II system. All notifications shall include:

(1) Name, address, contact name, telephone number, and registration number;

(2) Details and cost of project, and the name of the service provider for the project; and

(3) Start date and projected completion date.

A copy of this notification shall be maintained with on-site records.

b. Decommission the discontinued Stage II system or, in the case of removal and replacement of an existing dispenser system, decommission each dispenser system piping in accordance with all applicable steps provided in the Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09, Petroleum Equipment Institute (PEI) (see 9VAC5-20-21), or an alternative procedure as approved by the board.

c. Notify the board in writing no more than 30 days after decommissioning all or part of a Stage II system. All notifications shall include:

(1) Name, address, contact name, telephone number, and registration number;

(2) Name and telephone number of the qualified technician or qualified service provider or both who decommissioned the Stage II equipment;

(3) Date decommissioning was complete and type of Stage II system;

(4) Steps used in decommissioning or a completed PEI checklist form (Appendix C of PEI/RP300-09);

(5) Copy of pressure decay test conducted after decommissioning was complete; and

(6) Statement from the service provider verifying the storage system has been left in a condition that will reliably prevent the release of any vapors or liquids from any component of the storage system associated with the Stage II system.

A copy of this notification shall be maintained with on-site records.

9. No owner or other person that continues to operate Stage II equipment in lieu of following the decommissioning procedures in subdivision 8 of this subsection shall be relieved from the continuing proper operation and maintenance of the Stage II equipment in compliance with this article.

G. Tank trucks/account trucks and vapor collection systems.

1. No owner or other person shall use or permit the use of any tank truck or account truck that is loaded or unloaded at facilities subject to the provisions of subsection C, D, or E of this section unless such truck is designed, maintained, and certified to be vapor tight. In addition, there shall be no avoidable visible liquid leaks. Invariably there will be a few drops of liquid from disconnection of dry breaks in liquid lines even when well maintained; these drops are allowed.

2. Vapor-laden tank trucks or account trucks exclusively serving facilities subject to subsection D or E of this section may be refilled only at facilities in compliance with subsection C of this section.

3. Tank truck and account truck hatches shall be closed at all times during loading and unloading operations (periods during which there is liquid flow into or out of the truck) at facilities subject to the provisions of subsection C, D, or E of this section.

4. During loading or unloading operations at facilities subject to the provisions of subsection C, D, or E of this section, there shall be no volatile organic compound concentrations greater than or equal to 100% of the lower explosive limit (LEL, measured as propane) at 2.5 centimeters around the perimeter of a potential leak source as detected by a combustible gas detector. In addition, there shall be no avoidable visible liquid leaks. Invariably there will be a few liquid drops from the disconnection of well-maintained bottom loading dry breaks and the raising of well-maintained top loading vapor heads; these few drops are allowed. The vapor collection system includes all piping, seals, hoses, connection, pressure-vacuum vents, and other possible leak sources between the truck and the

vapor disposal unit and between the storage tanks and vapor recovery unit.

5. The vapor collection and vapor disposal equipment must be designed and operated to prevent gauge pressure in the tank truck from exceeding 18 in H_20 and prevent vacuum from exceeding 6 in H_20.

6. Testing to determine compliance with subdivision 1 of this subsection shall be conducted and reported and data shall be reduced as set forth in procedures approved by the board using test methods specified there. All tests shall be conducted by, or under the direction of, a person qualified by training or experience in the field of air pollution testing, or tank truck maintenance and testing and approved by the board.

7. Monitoring to confirm the continuing existence of leak tight conditions specified in subdivision 4 of this subsection shall be conducted as set forth in procedures approved by the board using test methods specified there.

8. Owners of tank trucks and account trucks subject to the provisions of subdivision 1 of this subsection shall certify~~,~~ each year that the trucks are vapor tight in accordance with test procedures specified in subdivision 6 of this subsection. Trucks that are not vapor tight must be repaired within 15 days of the test and be tested and certified as vapor tight.

9. Each truck subject to the provisions of subdivision 1 of this subsection shall have information displayed on the tank indicating the expiration date of the certification and such other information as may be needed by the board to determine the validity of the certification. The means of display and location of ~~the above~~ this information shall be in a manner acceptable to the board.

10. An owner of a vapor collection/control system shall repair and retest the system within 15 days of the testing, if it exceeds the limit specified in subdivision 4 of this subsection.

11. The owner of a tank/account truck or vapor collection/control system or both subject to the provisions of this section shall maintain records of all certification testing and repairs. The records must identify the tank/account truck, vapor collection system, or vapor control system; the date of the test or repair; and, if applicable, the type of repair and the date of retest. The records must be maintained in a legible, readily available condition for at least two years after the date testing or repair was completed.

12. The records of certification tests required by subdivision 11 of this subsection shall, as a minimum, contain the following:

a. The tank/account truck tank identification number;

b. The initial test pressure and the time of the reading;

c. The final test pressure and the time of the reading;

d. The initial test vacuum and the time of the reading;

e. The final test vacuum and the time of the reading; and

f. Name and the title of the person conducting the test.

13. Copies of all records and reports required by this section shall immediately be made available to the board, upon verbal or written request, at any reasonable time.

14. The board may, at any time, monitor a tank/account truck, vapor collection system, or vapor control system~~,~~ by the method referenced in subdivision 6 or 7 of this subsection to confirm continuing compliance with subdivision 1 or 4 of this subsection.

15. If, after over one year of monitoring (i.e., at least two complete annual checks), the owner of a truck subject to the provisions of subdivision 6 of this subsection feels that modification of the requirements are in order, the owner may request in writing to the board that a revision be made. The request should include data that have been developed to justify any modifications in the monitoring schedule. On the other hand, if the board finds an excessive number of leaks during an inspection, or if the owner finds an excessive number of leaks during scheduled monitoring, consideration shall be given to increasing the frequency of inspection.

9VAC5-40-5270. Standard for toxic pollutants.

The provisions of ~~Article 3 (9VAC5-40-160 et seq.) of this chapter (Emission Standards for Toxic Pollutants, Rule 4-3)~~ Article 4, Emission Standards for Toxic Pollutants from Existing Sources, (9VAC5-60-200 et seq.) of Part I of Hazardous Air Pollutant Sources apply.

VA.R. Doc. No. R15-4006; Filed May 27, 2015, 11:19 a.m.

Final Regulation

Title of Regulation: **9VAC5-130. Regulation for Open Burning (Rev. E12) (amending 9VAC5-130-10 through 9VAC5-130-50, 9VAC5-130-100; repealing 9VAC5-130-60).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

Effective Date: July 15, 2015.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, TTY (804) 698-4021, or email mary.major@deq.virginia.gov.

Summary:

The amendments (i) specify that open burning prohibitions and restrictions and permissible open burning provisions apply only in volatile organic compound (VOC) emissions control areas; (ii) delete the reference to "urban areas" from the permissible burning provisions for VOC emissions control areas; (iii) add special provisions to address the specific burning needs of the Virginia

Department of Transportation; and (iv) add clarifying language and eliminate obsolete language.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I
General Provisions

9VAC5-130-10. Applicability.

A. Except as provided in subsections C and D of this section, the provisions of this chapter apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices. Special incineration devices, including open pit incinerators, are exempt from permitting requirements according to the provisions of 9VAC5-80-1105 and such exemption applies throughout the Commonwealth of Virginia.

B. ~~The provisions~~ This part and Part II (9VAC5-130-30 et seq.) of this chapter apply to volatile organic compounds emissions control areas (see 9VAC5-20-206). This part and Parts III (9VAC5-130-50 et seq.) and IV (9VAC5-130-100 et seq.) of this chapter apply throughout the Commonwealth of Virginia.

C. ~~The provisions of this chapter do~~ This chapter does not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality as required in Part IV of this chapter.

D. ~~The provisions of this chapter do~~ This chapter does not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9VAC5-40-6250 et seq.), Article 46 (9VAC5-40-6550 et seq.), or Article 54 (9VAC5-40-7950 et seq.) of 9VAC5-40 (Existing Stationary Sources) or (ii) Subparts Eb, AAAA or CCCC of 40 CFR Part 60.

9VAC5-130-20. Definitions.

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

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

C. Terms defined:

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this chapter and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" or "vegetative debris" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 [~~(Hazardous~~ (Virginia Hazardous] Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (9VAC20-81-10 et seq.) of 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Regular burn site" means [~~, in reference to burning conducted by the Virginia Department of Transportation, state-owned~~ state controlled] property where burning [conducted by the Virginia Department of Transportation] is expected to occur greater than once per year.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (9VAC20-81-10 et seq.) of 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Volatile organic compound emissions control area" means an area designated as such under 9VAC5-20-206.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

Part II

Volatile Organic Compound Emissions Control Areas

9VAC5-130-30. Open burning prohibitions.

A. No owner or other person shall cause or permit open burning of refuse or use of special incineration devices except as provided in 9VAC5-130-40.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

9VAC5-130-40. Permissible open burning.

A. Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through E of 9VAC5-130-30 are met:

1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard that constitutes a threat to the public health, safety or welfare and that cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:

a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. Hazardous waste permits may be required under the provisions of 9VAC20-60 [~~(~~Hazardous (Virginia Hazardous] Waste Management Regulations).

b. Destruction of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. Solid waste management permits may be required under the provisions of 9VAC20-81 (Solid Waste Management Regulations).

c. On-site destruction of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order to (i) suppress, control, or eradicate an infestation or pest; (ii) prevent or retard the spread of an infestation or pest; or (iii) prevent further disease transmission or progression.

2. Open burning is permitted for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for firefighting instruction are exempt from this notification requirement. Buildings that have not been demolished may be burned under the provisions of this subdivision only.

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.

4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9VAC5-130-30 are not burned.

5. ~~In urban areas, open~~ Open burning is permitted for the on-site destruction of leaves and tree, yard, and garden trimmings located on the premises of private property, provided that no regularly scheduled ~~public or private~~ collection service for [~~such~~ leaves and tree, yard, and garden] trimmings is available at the adjacent street or public road. ~~In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.~~

6. Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled ~~public or private~~ collection service for such refuse is available at the adjacent street or public road.

7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article [~~3 (9VAC5-40-160 et seq.) of 9VAC5-40 (Existing Stationary Sources)~~ 4, Emission Standards for Toxic Pollutants from Existing Sources (Rule 6-4), (9VAC5-60-200 et seq.)] and Article [~~3 (9VAC5-50-160 et seq.) of 9VAC5-50 (New and Modified Stationary Sources)~~ 5, Emission Standards for Toxic Pollutants from New and Modified Sources (Rule 6-5), (9VAC5-60-300 et seq.) of Part II of Hazardous Air Pollutant Sources]. Permits issued under 9VAC5-80 (Permits for Stationary Sources) may be used to satisfy the requirement for written approval. This activity must be consistent with the provisions of 9VAC20-60 (Virginia Hazardous Waste [Management] Regulations).

8. Open burning or the use of special incineration devices is permitted on site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited ~~in volatile organic compounds emissions control areas (see 9VAC5-20-206) during~~ from May~~, June, July, August, and~~ 1 through September 30.

9. Open burning is permitted for forest management ~~and~~, [~~agriculture~~ agricultural] practices, and highway construction and maintenance programs approved by the board (see 9VAC5-130-50), provided the following conditions are met:

a. The burning shall be at least 1,000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited ~~in volatile organic compounds emissions control areas (see 9VAC5-20-206) during~~ May~~, June, July, August, and~~ 1 through September 30.

B. Open burning or the use of special incineration devices permitted under the provisions of this chapter does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this chapter. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.

C. With regard to the provisions of subsection B of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No destruction of waste by open burning or transportation of waste to be destroyed by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.

Part III
Special Statewide Requirements for Forestry, Agricultural, and Highway Programs

9VAC5-130-50. Forest management ~~and~~, agricultural practices, and highway construction and maintenance programs.

~~A. Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through E of 9VAC5-130-30 are met.~~

~~B.~~ A. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan to:

1. Reduce forest fuels and minimize the effect of wild fires.

2. Control undesirable growth of hardwoods.

3. Control disease in pine seedlings.

4. Prepare forest land for planting or seeding.

5. Create a favorable habitat for certain species.

6. Remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.

~~C.~~ B. In the absence of other means of disposal, open burning may be used for the following agricultural practices to:

1. Destroy undesirable or diseased vegetation.

2. Clear orchards and orchard prunings.

3. Destroy empty fertilizer and chemical containers.

4. Denature seed and grain that may no longer be suitable for agricultural purposes.

5. Prevent loss from frost or freeze damage.

6. Create a favorable habitat for certain species.

7. Destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.

C. Open burning may be used for the destruction of vegetative debris generated by highway construction and

maintenance programs conducted by the Virginia Department of Transportation (VDOT) provided the burning is conducted in accordance with VDOT's best management practices (BMP) for vegetative debris and the following requirements are met:

1. The department has approved the BMP.

2. The local department regional office shall be notified at least five business days before commencement of a burn.

3. No liquid accelerants (e.g., diesel, motor oil, etc.) or other prohibited materials (e.g., building debris, treated wood, painted wood, paper, cardboard, asphaltic materials, tires, metal, garbage, etc.) shall be used.

4. No burn activity shall be conducted in a VOC emission control area from May 1 through September 30 or in violation of § 10.1-1142 of the Code of Virginia.

5. No more than one burn event per regular burn site shall be scheduled or commenced per 60-day period.

6. The open burn shall be extinguished for reasons including but not limited to the following:

a. Unfavorable meteorological conditions (i.e., high winds or air stagnation);

b. Official declaration by a governmental entity of a pollution alert, code red air quality action day, or air quality health advisory where the burn activity is occurring; or

c. The emission of smoke, ashes, dust, dirt, odors, or any other substance creates a threat to public health, a nuisance, a pollution problem, a fire hazard, a safety hazard, or impairment to visibility on traveled roads or airports.

9VAC5-130-60. ~~Waivers.~~ (Repealed.)

~~A. A waiver from any provision of this chapter may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted.~~

~~B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:~~

~~1. Show that the statutory provisions or other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.~~

~~2. Show that the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.~~

~~C. Waivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this chapter are met by the waiver.~~

~~D. A waiver from any applicable provision of this chapter may be granted by the board for any locality that has lawfully adopted an ordinance in accordance with 9VAC5-130-100.~~

Part ~~II~~ IV
Local Ordinances

9VAC5-130-100. Local ordinances on open burning.

A. General.

1. If the governing body of any locality wishes to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

2. In order to assist local governments in a VOC control area with the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model. For local governments located outside of a VOC control area, an ordinance must contain, at a minimum, the provisions in the title, purpose, definitions, and exemptions sections of the model ordinance in subsection C of this section.

3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.

4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

5. Local ordinances that have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning that differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

~~d. If a waiver from any provision of this chapter has been requested under 9VAC5-130-60, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.~~

2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.

4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances that have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

a. A public hearing is held prior to granting the variance;

b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and

c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. 9VAC5-170-150 shall not apply to local ordinances concerned solely with open burning.

C. Model ordinance.

ORDINANCE NO. (000)

Section (000-1). Title.

This ~~chapter~~ ordinance shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose.

The purpose of this ~~chapter~~ ordinance is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This ~~chapter~~ ordinance is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions.

For the purpose of this ~~chapter~~ ordinance and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the ~~meaning~~ meanings given them in this section.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this ordinance and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Construction waste" means solid waste that is produced or generated during construction remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 [~~(Hazardous~~ (Virginia Hazardous] Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See 9VAC20-81 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the

destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions.

The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management ~~and~~, [~~agriculture~~ agricultural] practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Section (000-6). Permissible open burning.

A. Open burning is permitted on site for the destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the following conditions are met:

1. The burning takes place on the premises of the private property; (and)

2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted (; and

3. No regularly scheduled ~~public or private~~ collection service for such trimmings is available at the adjacent street or public road[1]).

B. Open burning is permitted on site for the destruction of household waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;

2. Animal carcasses or animal wastes are not burned;

3. Garbage is not burned; (and)

4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted (; and

5. No regularly scheduled ~~public or private~~ collection service for such refuse is available at the adjacent street or public road[2]).

C. Open burning is permitted on site for destruction of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations that may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;

3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

4. The burning shall be conducted at the greatest distance practicable from highways and air fields,

5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for destruction of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas, provided that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill that meets the provisions of the regulations of the Virginia Waste Management Board;

2. The burning shall be attended at all times;

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. Sections 000-6 A through D notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device ~~during~~ May~~, June, July, August, or~~ 1 through September 30.[31])

Section (000-7). Permits.

A. When open burning of debris waste (Section 000-6 C) or open burning of debris on the site of a local landfill (Section 000-6 D) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions that are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met that are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

6. The use of special incineration devices shall be allowed only for the destruction of debris waste, clean burning construction waste, and clean burning demolition waste.

7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (designated local official).

(C. An application for a permit under Section 000-7 A or 000-7 B shall be accompanied by a processing fee of $____.[42])

Section (000-8). Penalties for violation.

A. Any violation of this ordinance is punishable as a Class 1 misdemeanor. (See § 15.2-1429 of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

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[1] ~~This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.~~

~~[2] This provision shall be included in ordinances for urban areas. It may be included in ordinances for nonurban areas.~~

[31] This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

[42]The fee stipulation in this section is optional at the discretion of the jurisdiction.

VA.R. Doc. No. R12-3200; Filed May 26, 2015, 3:34 p.m.

Fast-Track Regulation

Title of Regulation: **9VAC5-210. Regulation for Dispute Resolution (Rev. B14) (amending 9VAC5-210-20 through 9VAC5-210-80, 9VAC5-210-100, 9VAC5-210-110, 9VAC5-210-130 through 9VAC5-210-160).**

Statutory Authority: § 10.1-1186.3 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Debra A. Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4019, or email debra.harris@deq.virginia.gov.

Basis: This regulation is promulgated under the authority of § 10.1-1186.3 D of the Code of Virginia, which requires the State Air Pollution Control Board to adopt regulations for the conduct of mediation and dispute resolution in accordance with the provisions of § 10.1-1186.3. There is no discretion. Additionally, the board's overall authority is provided in § 10.1-1308 of the Virginia Air Pollution Control Law, which authorizes the board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Purpose: This regulation enhances the public health and welfare by expediting the resolution of environmental disputes in a manner that is less adversarial and less costly. Statutory provisions cited in the authorizing provisions of § 10.1-1186.3 of the Code of Virginia were revised after the effective date of this regulation. Therefore, 9VAC5-210 is amended as necessary for the changes made to the statutory requirements for dispute resolution and mediation in Title 8.01 of the Code of Virginia.

Rationale for Using Fast-Track Process: These amendments are not expected to be controversial as it is necessary to revise the regulation due to (i) changes to statutory provisions, (ii) revised regulatory citations, and (iii) an update of the mediation standards (document incorporated by reference).

Substance: The changes to the regulations include revised and additional requirements for dispute resolution and mediation under Title 8.01 of the Code of Virginia and an update of the document incorporated by reference.

Issues: The advantage of the amendments to the agency and the public is the elimination of any confusion that may arise from regulatory text that differs from the statute. There are no disadvantages to the public or the Commonwealth associated with this regulatory action.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to the Regulation. The State Air Pollution Control Board (Board) proposes to amend its dispute resolution regulation to harmonize it with Code of Virginia changes that have occurred since the regulation was promulgated in 2001.

Result of Analysis. Benefits likely outweigh costs for these proposed regulatory changes.

Estimated Economic Impact. Pursuant to § 10.1-1186.3 D of the Code of Virginia (COV), the Board promulgated a dispute resolution regulation in 2001. The Board now proposes to update this regulation to reflect Code changes since 2001. The Board proposes to insert definitions for "dispute resolution services" and "orientation session" as well as change all references to neutral facilitator to just neutral since that is how the COV refers to such individuals. The Board also proposes to update obsolete Code references and add language from the COV that deals with exceptions to nondisclosure requirements (threats of bodily injury toward another person, for instance, would be subject to disclosure and would not enjoy the protection of confidential materials nondisclosure).

No affected entity is likely to incur any costs on account of these proposed regulatory changes. Because these changes harmonize the regulation to COV requirements and remove potentially confusing obsolete language, affected entities are likely to benefit from the increased clarity that amending this regulation brings.

Businesses and Entities Affected. All individuals, businesses or other entities that have a significant disagreement with the Board over a regulation development or permit issuance are subject to this regulation. The regulation was first promulgated in 2001 and thus far the mediation and alternative dispute resolution proceedings of this chapter have not been utilized. There are currently approximately 520 active major permits through the Board's programs.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulation is unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulation is unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of the proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of the proposed regulation.

Real Estate Development Costs. This proposed regulation is unlikely to affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

The amendments (i) conform the regulation to changes in Chapters 20.2 (§ 8.01-576.4 et seq.) and 21.2 (§ 8.01-581.21 et seq.) of Title 8.01 of the Code of Virginia; (ii) update the incorporated mediation standards to reflect the edition effective July 1, 2011; and (iii) update terminology and citations.

9VAC5-210-20. Terms defined.

"Board" means the State Air Pollution Control Board.

"Conciliation" means a process in which a neutral ~~facilitator~~ facilitates settlement by clarifying issues and serving as an intermediary for negotiations in a manner that is generally more informal and less structured than mediation.

"Department" means the Department of Environmental Quality.

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

"Dispute resolution," "dispute resolution procedure," or "dispute resolution proceeding~~,~~" ~~or "dispute resolution service"~~ means any structured process in which a neutral ~~facilitator~~ assists disputants in reaching a voluntary settlement by means of dispute resolution techniques such as mediation, conciliation, early neutral evaluation, nonjudicial settlement conferences, or any other proceeding leading to a voluntary settlement conducted consistent with the requirements of this chapter. The term includes the ~~evaluation~~ orientation session.

"Dispute resolution program" means a program that offers dispute resolution services to the public that is run by the Commonwealth or any private for-profit or not-for-profit (including nonprofit) organization, political subdivision, or public corporation, or a combination of these.

"Dispute resolution services" includes screening and intake of disputants, conducting dispute resolution proceedings, drafting agreements, and providing information or referral services.

~~"Evaluation session" means a preliminary meeting during which the parties and the neutral facilitator assess the case and decide whether to continue with a dispute resolution proceeding or with adjudication.~~

"Mediation" means a process ~~by which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between the mediator and any party or parties, until such time as a resolution is agreed to by the parties or the parties discharge the mediator~~ in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.

"Mediator" means a neutral ~~facilitator~~ who is an impartial third party selected by agreement of the parties to a controversy to assist them in mediation. As used in this

chapter, this word may refer to a single person or to two or more people.

"Neutral~~ facilitator~~" means a person who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services. As used in this chapter, this word may refer to a single person or to two or more people.

"Orientation session" means a preliminary meeting during which the dispute resolution proceeding is explained to the parties and the parties and the neutral assess the case and decide whether to continue with a dispute resolution proceeding or adjudication.

"Party" means an interested person who has chosen to be and who is eligible to be a disputant in a dispute resolution proceeding. An interested person is eligible if he (i) has attended a public meeting or public hearing on the permit or regulation in dispute and is therefore named in the public record, (ii) is the applicant for the permit in dispute, or (iii) is the department.

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

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

Part II
General Provisions

9VAC5-210-30. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of this chapter, unless specified otherwise, shall apply in the administration of all regulations of the board to the extent not covered by a specific regulation of the board. In cases where the provisions of this chapter conflict with another regulation of the board, the provisions of the other regulation shall apply.

C. No provision of this chapter shall limit the power of the board to take appropriate action as necessary to carry out its duties under the Virginia Air Pollution Control Law.

D. By the adoption of this chapter, the board confers upon the director the administrative, enforcement, and decision-making authority articulated in this chapter.

E. Nothing in this chapter shall create or alter any right, action, or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act ~~(§ 9-6.14:1 et seq.)~~ (§ 2.2-4000 et seq. of the Code of Virginia), with applicable federal law, or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

F. For a permit in dispute, dispute resolution may not be initiated after the final permit is issued. For a regulation in dispute, dispute resolution may not be initiated after the final regulation is adopted.

9VAC5-210-40. Purpose and scope.

A. This chapter shall be construed to encourage the fair, expeditious, voluntary, consensual resolution of disputes. It shall not be construed to preclude collaborative community problem solving.

B. Dispute resolution shall be used to resolve only those disputes that reveal significant issues of disagreement among parties and may be used unless the board decides that it is not in the public interest to do so.

C. The decision to employ dispute resolution is in the board's sole discretion and is not subject to judicial review.

D. The outcome of any dispute resolution procedure shall not be binding upon the board but may be considered by the board in issuing a permit or promulgating a regulation.

E. Dispute resolution may be used to resolve a dispute relating to the promulgation, amendment, or repeal of a regulation that is subject to the public participation process prescribed in Article 2 ~~(§ 9-6.14:7.1 et seq.)~~ (§ 2.2-4006 et seq. of the Code of Virginia) of the Administrative Process Act.

F. Dispute resolution may be used to resolve a dispute involving any process relating to the issuance of a permit. Dispute resolution may be used in this case only with the consent and participation of the permit applicant and may be terminated at any time at the request of the permit applicant.

G. The board shall consider not using dispute resolution in the circumstances listed in § 10.1-1186.3 A of the Code of Virginia.

9VAC5-210-50. Costs.

A. Compensation of the neutral ~~facilitator~~ and any other associated common costs, such as rental fees, shall be the responsibility of the parties. Compensation of each party's counsel and other individual costs shall be the responsibility of that party alone, unless the parties agree otherwise.

B. An agreement regarding compensation and other associated costs shall be reached between the neutral ~~facilitator~~ and the parties before the dispute resolution procedure commences and shall be memorialized in writing.

C. In the absence of an agreement to the contrary, all costs shall be paid by the parties in equal shares.

9VAC5-210-60. Date, time, and place.

The dispute resolution procedure shall be conducted in any place within the Commonwealth of Virginia, on any date, and at any time agreeable to the parties and the neutral ~~facilitator~~.

9VAC5-210-70. Attendance at the dispute resolution procedure.

A. All parties shall attend all sessions of the dispute resolution procedure. Any party who fails to attend any session shall be conclusively deemed to have dropped out of

the dispute resolution procedure. A party may satisfy the attendance requirement by sending a representative familiar with the facts of the case. This representative shall have the authority to negotiate and to recommend settlement to the party that he represents.

B. Any party may have the assistance of an attorney or other representative during any session of the dispute resolution procedure.

C. Persons who are not parties or representatives of parties may attend dispute resolution sessions only with the permission of all parties and with the consent of the neutral ~~facilitator~~.

9VAC5-210-80. Confidentiality.

A. The provisions of § 8.01-576.10 of the Code of Virginia concerning the confidentiality of dispute resolution shall govern all dispute resolution proceedings held pursuant to this chapter except when the board uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation. The board shall inform the parties in the order of referral issued under 9VAC5-210-150 what this information is expected to be. If the board later decides that it will need additional information before it can issue the permit or promulgate the regulation, it shall so notify the parties as expeditiously as possible. If any of the information requested by the board would normally be protected by the confidentiality provisions of this section, the parties shall waive that protection when delivering the requested information to the board. Notwithstanding the above, any information qualifying as confidential under the Air Pollution Control Law shall remain confidential.

B. With the exception noted in subsection A of this section, all memoranda, work products, ~~or~~ and other materials contained in the case files of a neutral ~~facilitator~~ or dispute resolution program are confidential. Any communication made during dispute resolution that relates to the controversy ~~or the proceeding~~, including screening, intake, and scheduling a dispute resolution proceeding, whether made to the neutral ~~facilitator~~ or dispute resolution program staff, to a party, or to any other person, is confidential. Any party's lack of consent to participate in the dispute resolution process, at any point in the process, is confidential.

C. A written settlement agreement shall not be confidential, unless the parties otherwise agree in writing.

D. Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:

1. When all parties to the dispute resolution process agree, in writing, to waive the confidentiality;

2. To the extent necessary, in a subsequent action between the neutral ~~facilitator~~ or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution process; ~~or,~~

3. Statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in the dispute resolution procedure;

4. Where a threat to inflict bodily injury is made;

5. Where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime;

6. Where an ethics complaint is made against the neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint;

7. Where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation;

8. Where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-576.12 of the Code of Virginia in a proceeding to vacate a mediated agreement; or

9. As provided by law or rule other than the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

E. The use of attorney work product in dispute resolution shall not result in a waiver of the attorney work product privilege.

F. Unless otherwise specified by the parties, no dispute resolution procedure shall be electronically or stenographically recorded.

9VAC5-210-100. Standards for and authority of neutral ~~facilitator~~.

A. A neutral ~~facilitator~~ participating in a dispute resolution procedure pursuant to this chapter shall comply with all provisions of this section. A neutral ~~facilitator~~ shall indicate compliance by filing with the director a signed, written statement as follows: "I agree to comply with Virginia's statutes and regulations governing dispute resolution, including § 10.1-1186.3 of the Code of Virginia and 9VAC5-210-10 et seq."

B. A neutral ~~facilitator~~ acting as a mediator shall adhere to the Judicial Council of Virginia's Standards of Ethics and Professional Responsibility for Certified Mediators, effective July 1, 2011, and the standards and duty provisions of § 8.01-581.24 of the Code of Virginia. A neutral conducting a nonmediation dispute resolution proceeding shall adhere to the requirements of § 8.01-576.9 of the Code of Virginia.

C. If a complaint is made to the director that a neutral ~~facilitator~~ has failed to comply with all the provisions of the applicable regulations, laws, and Judicial Council Standards during a dispute resolution proceeding, the director shall notify the neutral ~~facilitator~~ of the complaint and shall give the neutral ~~facilitator~~ 10 business days to respond in writing.

If the director deems the response unsatisfactory, or if no response is made by the deadline, the director shall remove the neutral ~~facilitator~~ from the ongoing dispute resolution process. The parties to the terminated dispute resolution procedure shall decide whether to continue in the same dispute resolution procedure with a new neutral ~~facilitator~~, to begin a new dispute resolution procedure, or to forego further dispute resolution.

D. The recommendation of a neutral ~~facilitator~~ is not a case decision as defined in ~~§ 9-6.14:4~~ § 2.2-4001 of the Administrative Process Act and therefore may not be appealed.

9VAC5-210-110. Resumes of ~~neutral facilitators~~ neutrals and descriptions of dispute resolution programs.

The department may maintain a file containing the resumes of ~~neutral facilitators~~ neutrals and descriptions of dispute resolution programs. The file shall contain a disclaimer stating, "Inclusion of a resume or dispute resolution program description in this file does not constitute an endorsement of a neutral ~~facilitator~~ or a dispute resolution program, nor should negative implications be drawn from the fact that a ~~neutral facilitator's~~ neutral's resume or a dispute resolution program description is not included in this file. Parties are not obligated to choose a neutral ~~facilitator~~ or dispute resolution program from those whose resumes and descriptions are maintained in this file."

9VAC5-210-130. Referral of disputes to dispute resolution.

A. The board, consistent with the provisions of 9VAC5-210-40 G, may refer a dispute to dispute resolution.

B. A party other than the board may request dispute resolution by applying to the director.

1. The application shall contain the following:

a. A request for dispute resolution, specifying mediation or another dispute resolution procedure;

b. The names, postal addresses, telephone numbers, fax numbers, e-mail addresses, or other appropriate communication addresses or numbers of all known parties to the dispute and of their attorneys, if known; and

c. A statement of issues and a summary of the basis for the dispute.

2. Filing an application constitutes consent to referral of the dispute to dispute resolution.

3. Filing an application shall not stay any proceeding and shall have no effect on any procedural or substantive right of any party to the dispute.

4. Under normal circumstances, within 14 business days of the receipt of an application from a party requesting dispute resolution, the director shall review the application to determine if the dispute is suitable for dispute resolution, shall decide which form of dispute resolution is appropriate, and shall notify the parties in writing accordingly.

5. If the director has decided that mediation is appropriate, the provisions of Part III (9VAC5-210-140 et seq.) of this chapter shall apply.

6. If the director has decided that a dispute resolution proceeding other than mediation is appropriate, the director shall specify what that proceeding is. The appointment of the neutral ~~facilitator~~ for this proceeding shall follow the procedure for the appointment of a mediator as specified in 9VAC5-210-140. The parties and the neutral ~~facilitator~~ shall determine the appropriate procedures for conducting this dispute resolution proceeding.

Part III
Mediation Procedures

9VAC5-210-140. Appointment of mediator.

A. If the director has decided that mediation is appropriate, any party may nominate a mediator.

B. If all parties agree with the nomination, the director shall appoint that person the mediator for the case and shall notify the parties accordingly.

C. If all parties do not agree with the nomination, the following procedure shall apply:

1. By a date specified by the director, each party shall name up to three mediators who would be acceptable to that party. These mediators may or may not have resumes on file with the department.

2. The director shall compile a list of the names submitted and send it to the parties.

3. Upon receipt of the list, each party may strike two names and return the list to the director within 14 business days following the date on which the list was mailed.

4. On the next business day after the 14-day period expires or as soon as practicable thereafter, the director shall appoint a mediator from the remaining list of names and shall notify the parties accordingly.

D. Once the mediator is appointed, the director shall send the mediator an acceptance form to sign and return. The acceptance form shall require the mediator to append his signature to the following statements:

1. That the mediator agrees to abide by the applicable dispute resolution and mediation statutes, regulations, and ethical standards;

2. That the mediator agrees to attempt to complete the mediation within 60 business days from the date of his appointment; and

3. That the mediator foresees no potential conflict of interest in agreeing to mediate the case. A determination of conflict of interest shall be made by the director or board on a case-by-case basis.

9VAC5-210-150. ~~Evaluation~~ Orientation session.

A. Once the mediator has been appointed, the board shall issue a referral to the mediator and the parties. This referral shall include a list of the information that the board, in its preliminary judgment, expects to use in making its final decision regarding the case. This list shall contain the caveat that the board may require other information as yet unspecified at some point in the future. All parties shall attend one ~~evaluation~~ orientation session with the mediator unless excused pursuant to subsection B of this section.

B. The board shall excuse a party from participation in the ~~evaluation~~ orientation session if, within 14 business days after issuance of the order of referral, a statement signed by the party is filed with the board. This statement shall declare that the mediation process has been explained to the party and that the party does not wish to participate in the ~~evaluation~~ orientation session.

C. The ~~evaluation~~ orientation session shall be conducted at any place within the Commonwealth of Virginia, at any time, and on any date convenient to the mediator and the parties.

D. At least seven business days before the ~~evaluation~~ orientation session, each party shall provide the mediator with a statement outlining his perspective on the facts and issues of the case. At the discretion of the mediator, these statements may be mutually exchanged by the parties.

E. During the ~~evaluation~~ orientation session, the parties, assisted by the mediator, shall determine the manner in which the issues in dispute shall be framed and addressed. In the absence of agreement by the parties, the mediator shall make this determination.

9VAC5-210-160. Continuation, termination, and resolution of mediation.

A. Following the ~~evaluation~~ orientation session, mediation shall proceed in any manner agreed on by the parties and the mediator in conformance with the provisions of ~~9VAC5-210-60~~ 9VAC5-210-50 through 9VAC5-210-80.

B. Mediation may be terminated through written notice by the permit applicant or the director at any time before settlement is reached.

C. Mediation shall continue if a party other than the permit applicant or the director chooses to opt out of mediation following the ~~evaluation~~ orientation session. A party who chooses to opt out of mediation at any time following the ~~evaluation~~ orientation session or who, through nonattendance, is conclusively deemed to have dropped out of the dispute resolution procedure shall not be bound by any written settlement agreement resulting from the mediation but shall be bound by the cost provisions of 9VAC5-210-50 and the confidentiality provisions of 9VAC5-210-80.

D. If the mediation is terminated before settlement is reached, the parties shall resume the same status as before mediation and may proceed with the formal adjudication as if mediation had not taken place. The board shall not refer the case to mediation a second time.

E. If the mediation results in settlement, a written settlement agreement shall be signed and dated by each party or by that party's authorized representative.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC5-210)

~~Virginia Supreme Court, Judicial Council of Virginia, "Standards of Ethics and Professional Responsibility for Certified Mediators," October 2000~~

Standards of Ethics and Professional Responsibility for Certified Mediators, Office of the Executive Secretary of the Supreme Court of Virginia, adopted by the Judicial Council of Virginia, effective July 1, 2011

VA.R. Doc. No. R15-3981; Filed May 27, 2015, 11:07 a.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Fast-Track Regulation

Title of Regulation: **9VAC15-40. Small Renewable Energy Projects (Wind) Permit by Rule (amending 9VAC15-40-10, 9VAC15-40-20, 9VAC15-40-110, 9VAC15-40-120, 9VAC15-40-130).**

Statutory Authority: § 10.1-1197.6 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Basis: Sections 10.1-1197.5 through 10.1-1197.11 of the Code of Virginia authorize the Department of Environmental Quality (DEQ) to promulgate regulations that provide permitting requirements to protect Virginia's natural resources that may be affected by the construction and operation of small renewable wind energy projects.

Purpose: The amendments are a result of a periodic review and are required for consistency between the other permit by rule (PBR) regulations (solar and combustion) required under Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. This consistency will benefit the general public health and welfare. Section 10.1-1197.5 of the Code provides permitting requirements to protect Virginia's natural and historic resources that may be affected by the construction and operation of small renewable wind, solar, or combustion energy projects.

Rationale for Using Fast-Track Process: The amendments add language to ensure consistency with the solar and combustion small renewable energy project PBRs. All of the changes were thoroughly vetted during the regulation adoption process for both the solar and combustion PBRs, which were

promulgated after the wind PBR. Therefore, no comments regarding the changes to this chapter are anticipated.

Substance: The technical changes to the wind PBR include the following:

1. Adding language regarding payment of fees for small renewable wind energy projects in Virginia,

2. Adding a statement to clarify that wind projects under five megawatts (MW) are considered covered by the PBR, and

3. Making technical changes to one definition and corrections to citations in the sections dealing with Internet resources and documents incorporated by reference.

Issues: The general public health and welfare will benefit because the revision ensures consistency for permitting requirements for small wind renewable energy projects greater than five MW but equal or less than 100 MW with requirements for solar and combustion renewable projects of similar size. This consistency in permitting requirements is necessary to ensure uniform protection of historic and natural resources while encouraging the development of renewable energy. The amendments allow the department to expedite the permitting of small renewable wind energy projects in a streamlined way while ensuring the protection of historic and natural resources of the Commonwealth.

Small Business Impact Review Report of Findings: This regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Environmental Quality (Department) proposes to: 1) amend the definition of small wind energy project to remove the clause "whose main purpose is to supply electricity," 2) add a statement to clarify that wind projects under five megawatts are considered to be covered by the permit by rule (PBR), 3) add language allowing fees to be paid electronically when the Department is able to accept electronic payments, and 4) update citations and links in the section pertaining to internet accessible resources.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The Department proposes to remove the clause "whose main purpose is to supply electricity," from the definition of small wind energy project in order to clarify that projects that are not selling electricity to the grid would also be eligible for a permit under the PBR. Though this is not intended to be a change in policy, it may be beneficial in that the clarification may moderately increase the likelihood that environmentally friendly wind energy projects are initiated. Adding a statement to clarify that wind projects fewer than five megawatts are considered to be covered by the PBR will be similarly beneficial.

The proposal to allow fees to be paid electronically when the Department is able to accept electronic payments is beneficial in that it can save staff time for both potential permittees and the Department.

Businesses and Entities Affected. The proposed amendments affect individuals, businesses or other entities wishing to develop a small wind energy project of 100 MW or less. Currently there are no such projects in the Commonwealth.[1]

Localities Particularly Affected. The proposed regulation applies statewide and is not designed to have a disproportionate material impact on any particular locality. As a practical matter, however, wind-energy projects will be located where adequate wind conditions exist (generally Class 3 winds or higher for commercial-scale projects).[2]

Projected Impact on Employment. To the extent that the proposed clarifying language might encourage the pursuit of small wind energy projects in the Commonwealth, there may be a small increase in affiliated jobs.

Effects on the Use and Value of Private Property. The proposed clarifying language could potentially moderately increase the likelihood that a firm would pursue a small wind energy project.

Small Businesses: Costs and Other Effects. None of the proposed amendments increase costs for small businesses. The proposal to allow fees to be paid electronically when the Department is able to accept electronic payments could save a small amount of staff time for small businesses that start a small wind energy project.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not create an adverse impact for small businesses.

Real Estate Development Costs. The proposed amendments will not significantly affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

[1] Source: Department of Environmental Quality

[2] Ibid

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

Summary:

The amendments (i) modify the definition of the term "small wind energy project," (ii) clarify that wind projects under five megawatts are considered covered by the regulation, (iii) allow fees to be paid electronically when the Department of Environmental Quality is able to accept electronic payments, and (iv) update citations and links.

Part I
Definitions and Applicability

9VAC15-40-10. Definitions.

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

"Applicant" means the owner or operator who submits an application to the department for a permit by rule pursuant to this chapter.

"Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS geospatial data system (9VAC15-40-120 C 1).

"Department" means the Department of Environmental Quality, its director, or the director's designee.

"DCR" means the Department of Conservation and Recreation.

"DGIF" means the Department of Game and Inland Fisheries.

"Disturbance zone" means the area within the site directly impacted by construction and operation of the wind energy project, and within 100 feet of the boundary of the directly impacted area.

"Ecological core" means an area of nonfragmented forest, marsh, dune, or beach of ecological importance that is at least 100 acres in size and identified in DCR's Natural Landscape Assessment web-based application (9VAC15-40-120 C 2).

"Historic resource" means any prehistoric or historic district, site, building, structure, object, or cultural landscape that is included or meets the criteria necessary for inclusion in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

"Important Bird Areas" means the designation of discrete sites by the National Audubon Society as having local, regional, continental, or global importance for birds because they support significant numbers of one or more high priority avian species (e.g., T&E, SGCN) during the breeding, wintering, or migration seasons.

"Interconnection point" means the point or points where the wind energy project connects to a project substation for transmission to the electrical grid.

"Invasive plant species" means non-native plant species that cause, or are likely to cause, economic or ecological harm or harm to human health as established by Presidential Executive Order 13112 (64 FR 6183, February 3, 1999) and contained on DCR's Invasive Alien Plant Species of Virginia (9VAC15-40-120 B 3).

"Migratory corridors" means major travel routes used by significant numbers of birds during biannual migrations between breeding and wintering grounds.

"Migratory staging areas" means those sites along migratory corridors where significant numbers of birds stop to feed and rest during biannual migrations between breeding and wintering grounds that are essential to successful migration.

"Natural heritage resource" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Nearshore waters" means all tidal waters within the Commonwealth of Virginia and seaward of the mean low-water shoreline to three nautical miles offshore in the Atlantic Ocean.

"Operator" means the person responsible for the overall operation and management of a wind energy project.

"Other avian mitigation factors" means Important Bird Areas, migratory corridors, migratory staging areas, and wintering areas within the Coastal Avian Protection Zones.

"Owner" means the person who owns all or a portion of a wind energy project.

"Permit by rule" means provisions of the regulations stating that a project or activity is deemed to have a permit if it meets the requirements of the provision.

"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, any interstate body, or any other legal entity.

"Phase of a project" means one continuous period of construction, startup, and testing activity of the wind energy project. A phase is deemed complete when 90 calendar days have elapsed since the last previous wind turbine has been placed in service, except when a delay has been caused by a significant force majeure event, in which case a phase is deemed complete when 180 calendar days have elapsed since the last previous wind turbine has been placed in service.

"Post-construction" means any time after the last turbine on the wind energy project or phase of that project has been placed in service.

"Pre-construction" means any time prior to commencing land-clearing operations necessary for the installation of energy-generating structures at the small wind energy project.

"Rated capacity" means the maximum capacity of a wind energy project based on the sum total of each turbine's nameplate capacity.

"SGCN" or "species of greatest conservation need" means any vertebrate species so designated by DGIF as Tier 1 or Tier 2 in the Virginia Wildlife Action Plan (9VAC15-40-120 B 6).

"Site" means the area containing a wind energy project that is under common ownership or operating control. Electrical infrastructure and other appurtenant structures up to the interconnection point shall be considered to be within the site.

"Small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from sunlight, wind, falling water, wave motion, tides, or geothermal power, or (ii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.

"Small wind energy project," "wind energy project," or "project" means a small renewable energy project that (i) generates electricity from wind, ~~whose main purpose is to supply electricity,~~ consisting of one or more wind turbines and other accessory structures and buildings, including substations, post-construction meteorological towers, electrical infrastructure, and other appurtenant structures and facilities within the boundaries of the site; and (ii) is designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts. Two or more wind energy projects otherwise spatially separated but under common ownership or operational control, which are connected to the electrical grid under a single interconnection agreement, shall be considered a single wind energy project. Nothing in this definition shall imply that a permit by rule is required for the construction of meteorological towers to determine the appropriateness of a site for the development of a wind energy project.

"State-owned submerged lands" means lands that lie seaward of the mean low-water mark in tidal waters or that have an elevation below the ordinary mean high-water elevation in nontidal areas that are considered property of the Commonwealth pursuant to § 28.2-1200 of the Code of Virginia.

"T&E," "state threatened or endangered species," or "state-listed species" means any wildlife species designated as a Virginia endangered or threatened species by DGIF pursuant to ~~the § 29.1-563-570~~ §§ 29.1-563 through 29.1-570 of the Code of Virginia and 4VAC15-20-130.

"VLR" means the Virginia Landmarks Register (9VAC15-40-120 B 1).

"VLR-eligible" means those historic resources that meet the criteria necessary for inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not listed in VLR.

"VLR-listed" means those historic resources that have been listed in the VLR in accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

"VMRC" means the Virginia Marine Resources Commission.

"Wildlife" means wild animals; except, however, that T&E insect species shall only be addressed as part of natural heritage resources and shall not be considered T&E wildlife.

"Wintering areas" means those sites where a significant portion of the rangewide population of one or more avian species overwinter annually.

9VAC15-40-20. Authority and applicability.

This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains requirements for wind-powered electric generation projects consisting of wind turbines and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 100 megawatts. The department has determined that a permit by rule is required for small wind energy projects with a rated capacity greater than ~~5~~ five megawatts and this regulation contains the permit by rule provisions for these projects in

Part II (9VAC15-40-30 et seq.) of this chapter. The department has also determined that a permit by rule is not required for small wind energy projects with a rated capacity of ~~5~~ five megawatts or less and this regulation contains notification and other provisions for these projects in Part III (9VAC15-40-130) of this chapter. Projects that meet the criteria in Part III of this chapter are deemed to be covered by the permit by rule.

9VAC15-40-110. Fees.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit by rule or a modification to an existing permit by rule for a small wind energy project.

B. Permit fee payment and deposit. Fees for permit by rule applications or modifications shall be paid by the applicant as follows:

1. Due date. All permit application fees or modification fees are due on submittal day of the application or modification package.

2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218. When the department is able to accept electronic payments, payments may be submitted electronically.

3. Incomplete payments. All incomplete payments shall be deemed nonpayments.

4. Late payment. No application or modification submittal will be deemed complete until the department receives proper payment.

C. Fee schedules. Each application for a permit by rule and each application for a modification of a permit by rule is a separate action and shall be assessed a separate fee. The amount of the permit application fee is based on the costs associated with the permitting program required by this chapter. The fee schedules are shown in the following table:

Type of Action	Fee
Permit by rule application (including first three years of operation)	$16,000
Permit by rule modification (after first three years of operation)	$5,000

D. Use of fees. Fees are assessed for the purpose of defraying the department's costs of administering and enforcing the provisions of this chapter including, but not limited to, permit by rule processing, permit by rule modification processing, and inspection and monitoring of small wind energy projects to ensure compliance with this chapter. Fees collected pursuant to this section shall be used for the administrative and enforcement purposes specified in this section and in § 10.1-1197.6 E of the Code of Virginia.

E. Fund. The fees, received by the department in accordance with this chapter, shall be deposited in the Small Renewable Energy Project Fee Fund.

F. Periodic review of fees. Beginning July 1, 2012, and periodically thereafter, the department shall review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover 100% of the department's direct costs associated with use of the fees.

9VAC15-40-120. Internet accessible resources.

A. This chapter refers to resources to be used by applicants in gathering information to be submitted to the department. These resources are available through the Internet; therefore, in order to assist the applicants, the uniform resource locator or Internet address is provided for each of the references listed in this section.

B. Internet available resources.

1. The Virginia Landmarks Register, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia. Available at the following Internet address: ~~http://www.dhr.virginia.gov/registers/register.htm~~ http://www.dhr.virginia.gov.

2. Professional Qualifications Standards, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as amended and annotated (48 FR 44716-740, September 29, 1983), National Parks Service, Washington, DC. Available at the following Internet address: http://www.nps.gov/history/local-law/arch_stnds_9.htm.

3. Invasive alien plant species of Virginia, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, Virginia. Available at the following Internet address: ~~http://www.dcr.virginia.gov/natural_heritage/invspinfo.shtml~~ http://www.dcr.virginia.gov.

4. The Natural Communities of Virginia, Classification of Ecological Community Groups, ~~Second Approximation, Version 2.3, 2010,~~ Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA. Available at the following Internet address: ~~http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml~~ http://www.dcr.virginia.gov.

5. Virginia Outdoors Plan, ~~2007,~~ Virginia Department of Conservation and Recreation, Richmond, Virginia. Available at the following Internet address: ~~http://www.dcr.virginia.gov/recreational_planning/vop.shtml~~ http://www.dcr.virginia.gov.

6. Virginia's Comprehensive Wildlife Conservation Strategy, 2005 (referred to as the Virginia Wildlife Action Plan), Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. Available at the following Internet address:

~~http://www.bewildvirginia.org/wildlifeplan/~~ http://www.bewildvirginia.org.

C. Internet applications.

1. Coastal GEMS application, 2010, Virginia Department of Environmental Quality. Available at the following Internet address: ~~http://www.deq.virginia.gov/coastal/coastalgems.html~~ http://www.deq.virginia.gov.

NOTE: This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 629 ~~E.~~ East Main Street, Richmond, Virginia 23219, (804) 698-4000.

2. Virginia Natural Landscape Assessment (VaNLA), ~~2010,~~ Virginia Department of Conservation and Recreation. Available at the following Internet address: for detailed information on ecological cores go to ~~http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtm~~ http://www.dcr.virginia.gov/natural_heritage. Land maps may be viewed at DCR's ~~Land Conservation~~ Natural Heritage Data Explorer ~~Geographic Information System~~ (NHDE) website at ~~http://www.vaconservedlands.org/gis.aspx~~ https://www.vanhde.org.

NOTE: The NHDE website is maintained by DCR. Actual shapefiles and metadata for publicly-available data on NHDE are available ~~for~~ free of charge by contacting a DCR staff person ~~at vaconslands@dcr.virginia.gov or~~ DCR, Division of Natural Heritage, ~~217 Governor Street~~ 600 East Main Street, 24th Floor, Richmond, Virginia 23219, (804) 786-7951.

3. Virginia Fish and Wildlife Information Service, 2010, Virginia Department of Game and Inland Fisheries. Available at the following Internet address: http://www.vafwis.org/fwis/.

NOTE: This website is maintained by DGIF and is accessible to the public as "visitors" or to registered subscribers. Registration, however, is required for access to resource-specific or species-specific locational data and records. Assistance and information may be obtained by contacting DGIF, Fish and Wildlife Information Service, ~~4010 West Broad Street, Richmond, Virginia 23230~~ 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, (804) 367-6913.

Part III

Notification and Other Provisions for Projects of ~~5~~ Five Megawatts or Less

9VAC15-40-130. Small wind energy projects of ~~5~~ five megawatts or less.

A. The owner or operator of a small wind energy project with a rated capacity equal to or less than 500 kilowatts is not required to submit any notification or certification to the department.

B. The owner or operator of a small wind energy project with a rated capacity greater than 500 kilowatts and equal to or less than ~~5~~ five megawatts shall:

1. Notify the department ~~by submitting~~ and submit a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances and applicable local government requirements; and

2. For projects located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map, contribute $1,000 per megawatt of rated capacity, or partial megawatt thereof, to a fund designated by the department in support of scientific research investigating the impacts of projects in CAPZ on avian resources.

VA.R. Doc. No. R15-3974; Filed May 27, 2015, 11:12 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Fast-Track Regulation

Title of Regulation: **9VAC20-15. Regulation for Dispute Resolution (Rev. 1) (amending 9VAC20-15-20 through 9VAC20-15-80, 9VAC20-15-100, 9VAC20-15-110, 9VAC20-15-130 through 9VAC20-15-160).**

Statutory Authority: § 10.1-1186.3 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Debra Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.harris@deq.virginia.gov.

Basis: This regulation is promulgated under the authority of § 10.1-1186.3 D of the Code of Virginia, which requires the Virginia Waste Management Board to adopt regulations for the conduct of mediation and dispute resolution in accordance with the provisions of § 10.1-1186.3. There is no discretion. Additionally, the board's overall authority is provided in § 10.1-1402 of the Virginia Waste Management Act, which authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law.

Purpose: This regulation enhances the public health and welfare by expediting the resolution of environmental disputes in a manner that is less adversarial and less costly. Statutory provisions cited in the authorizing provisions of § 10.1-1186.3 of the Code of Virginia were revised after the effective date of this regulation. Therefore, 9VAC20-15 is amended as necessary for the changes made to the statutory requirements for dispute resolution and mediation in Title 8.01 of the Code of Virginia.

Rationale for Using Fast-Track Process: The amendments are not expected to be controversial as it is necessary to revise the regulation due to (i) changes to statutory provisions, (ii) revised regulatory citations, and (iii) an update of the mediation standards (document incorporated by reference).

Substance: The changes to the regulations include revised and additional requirements for dispute resolution and mediation under Title 8.01 of the Code of Virginia and an update to the document incorporated by reference.

Issues: The advantage of the amendments to the agency and the public is the elimination of any confusion that may arise from regulatory text that differs from the statute. There are no disadvantages to the public or the Commonwealth associated with this regulatory action.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. This regulation has not been changed since it was first promulgated in 2001. Since then the statutory requirements for dispute resolution and mediation under Chapter 20.2 and Chapter 21.2 of Title 8.01 of the Code of Virginia have been amended. Therefore the Virginia Waste Management Board (Board) proposes several amendments to this regulation in order to reflect changes made to Title 8.01 of the Code of Virginia. In addition, the Board proposes to update the reference to the Virginia Supreme Court, Judicial Council of Virginia, "Standards of Ethics and Professional Responsibility for Certified Mediators" to reflect the latest version.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The proposed amendments to this regulation will make the regulation consistent with statutes and will not change effective law. Amending the regulation to reflect the law in effect will be beneficial in that it will reduce the likelihood that readers of the regulation (who do not also read the relevant statutes) will be misled about the actual law in effect.

Businesses and Entities Affected. This regulation potentially affects individuals, businesses or other entities that have a significant disagreement with the Board over a regulation development or permit issuance. The regulation was first promulgated in 2001 and thus far the mediation and alternative dispute resolution proceedings of this chapter have not been utilized. Approximately 270 entities currently have full permits through the Board's solid and hazardous waste programs.[1]

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not create an adverse impact for small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for

publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

[1] Data source: Department of Environmental Quality

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

Summary:

The amendments (i) conform the regulation to changes in Chapters 20.2 (§ 8.01-576.4 et seq.) and 21.2 (§ 8.01-581.21 et seq.) of Title 8.01 of the Code of Virginia; (ii) update the incorporated mediation standards to reflect the edition effective July 1, 2011; and (iii) update terminology and citations.

9VAC20-15-20. Terms defined.

"Board" means the Virginia Waste Management Board.

"Conciliation" means a process in which a neutral ~~facilitator~~ facilitates settlement by clarifying issues and serving as an intermediary for negotiations in a manner that is generally more informal and less structured than mediation.

"Department" means the Department of Environmental Quality.

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

"Dispute resolution," "dispute resolution procedure," or "dispute resolution proceeding~~,~~" ~~or "dispute resolution service"~~ means any structured process in which a neutral ~~facilitator~~ assists disputants in reaching a voluntary settlement by means of dispute resolution techniques such as mediation, conciliation, early neutral evaluation, nonjudicial settlement conferences, or any other proceeding leading to a voluntary settlement conducted consistent with the requirements of this chapter. The term includes the ~~evaluation~~ orientation session.

"Dispute resolution program" means a program that offers dispute resolution services to the public that is run by the Commonwealth or any private for-profit or not-for-profit (including nonprofit) organization, political subdivision, or public corporation, or a combination of these.

"Dispute resolution services" includes screening and intake of disputants, conducting dispute resolution proceedings, drafting agreements, and providing information or referral services.

~~"Evaluation session" means a preliminary meeting during which the parties and the neutral facilitator assess the case and decide whether to continue with a dispute resolution proceeding or with adjudication.~~

"Mediation" means a process ~~by which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between the mediator and any party or parties, until such time as a resolution is agreed to by the parties or the parties discharge the mediator~~ in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.

"Mediator" means a neutral ~~facilitator~~ who is an impartial third party selected by agreement of the parties to a controversy to assist them in mediation. As used in this chapter, this word may refer to a single person or to two or more people.

"Neutral ~~facilitator~~" means a person who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services. As used in this chapter, this word may refer to a single person or to two or more people.

"Orientation session" means a preliminary meeting during which the dispute resolution proceeding is explained to the parties and the parties and the neutral assess the case and decide whether to continue with a dispute resolution proceeding or adjudication.

"Party" means an interested person who has chosen to be and who is eligible to be a disputant in a dispute resolution proceeding. An interested person is eligible if he (i) has attended a public meeting or public hearing on the permit or regulation in dispute and is therefore named in the public record, (ii) is the applicant for the permit in dispute, or (iii) is the department.

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

"Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

Part II
General Provisions

9VAC20-15-30. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of this chapter, unless specified otherwise, shall apply in the administration of all regulations of the board to the extent not covered by a specific regulation of the board. In cases where the provisions of this chapter conflict with another regulation of the board, the provisions of the other regulation shall apply.

C. No provision of this chapter shall limit the power of the board to take appropriate action as necessary to carry out its duties under the Virginia Waste Management Act.

D. By the adoption of this chapter, the board confers upon the director the administrative, enforcement, and decision-making authority articulated in this chapter.

E. Nothing in this chapter shall create or alter any right, action, or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act ~~(§ 9-6.14:1 et seq.)~~ (§ 2.2-4000 et seq. of the Code of Virginia), with applicable federal law, or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

F. For a permit in dispute, dispute resolution may not be initiated after the final permit is issued. For a regulation in dispute, dispute resolution may not be initiated after the final regulation is adopted.

9VAC20-15-40. Purpose and scope.

A. This chapter shall be construed to encourage the fair, expeditious, voluntary, consensual resolution of disputes. It shall not be construed to preclude collaborative community problem solving.

B. Dispute resolution shall be used to resolve only those disputes that reveal significant issues of disagreement among parties and may be used unless the board decides that it is not in the public interest to do so.

C. The decision to employ dispute resolution is in the board's sole discretion and is not subject to judicial review.

D. The outcome of any dispute resolution procedure shall not be binding upon the board but may be considered by the board in issuing a permit or promulgating a regulation.

E. Dispute resolution may be used to resolve a dispute relating to the promulgation, amendment, or repeal of a regulation that is subject to the public participation process prescribed in Article 2 ~~(§ 9-6.14:7.1 et seq.)~~ (§ 2.2-4006 et seq. of the Code of Virginia) of the Administrative Process Act.

F. Dispute resolution may be used to resolve a dispute involving any process relating to the issuance of a permit. Dispute resolution may be used in this case only with the consent and participation of the permit applicant and may be terminated at any time at the request of the permit applicant.

G. The board shall consider not using dispute resolution in the circumstances listed in § 10.1-1186.3 A of the Code of Virginia.

9VAC20-15-50. Costs.

A. Compensation of the neutral ~~facilitator~~ and any other associated common costs, such as rental fees, shall be the responsibility of the parties. Compensation of each party's counsel and other individual costs shall be the responsibility of that party alone, unless the parties agree otherwise.

B. An agreement regarding compensation and other associated costs shall be reached between the neutral ~~facilitator~~ and the parties before the dispute resolution procedure commences and shall be memorialized in writing.

C. In the absence of an agreement to the contrary, all costs shall be paid by the parties in equal shares.

9VAC20-15-60. Date, time, and place.

The dispute resolution procedure shall be conducted in any place within the Commonwealth of Virginia, on any date, and at any time agreeable to the parties and the neutral ~~facilitator~~.

9VAC20-15-70. Attendance at the dispute resolution procedure.

A. All parties shall attend all sessions of the dispute resolution procedure. Any party who fails to attend any session shall be conclusively deemed to have dropped out of the dispute resolution procedure. A party may satisfy the attendance requirement by sending a representative familiar with the facts of the case. This representative shall have the authority to negotiate and to recommend settlement to the party that he represents.

B. Any party may have the assistance of an attorney or other representative during any session of the dispute resolution procedure.

C. Persons who are not parties or representatives of parties may attend dispute resolution sessions only with the permission of all parties and with the consent of the neutral ~~facilitator~~.

9VAC20-15-80. Confidentiality.

A. The provisions of § 8.01-576.10 of the Code of Virginia concerning the confidentiality of dispute resolution shall govern all dispute resolution proceedings held pursuant to this chapter except when the board uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation. The board shall inform the parties in the order of referral issued under 9VAC20-15-150 what this information is expected to be. If the board later decides that it will need additional information before it can issue the permit or promulgate the regulation, it shall so notify the parties as expeditiously as possible. If any of the information requested by the board would normally be protected by the confidentiality provisions of this section, the parties shall waive that protection when delivering the requested information to the board. Notwithstanding the above, any information qualifying as confidential under the Virginia Waste Management Act shall remain confidential.

B. With the exception noted in subsection A of this section, all memoranda, work products, ~~or~~ and other materials contained in the case files of a neutral ~~facilitator~~ or dispute resolution program are confidential. Any communication made during dispute resolution that relates to the controversy ~~or the proceeding~~, including screening, intake, and scheduling a dispute resolution proceeding, whether made to the neutral ~~facilitator~~ or dispute resolution program staff, to a party, or to any other person, is confidential. Any party's lack of consent to participate in the dispute resolution process, at any point in the process, is confidential.

C. A written settlement agreement shall not be confidential, unless the parties otherwise agree in writing.

D. Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:

1. When all parties to the dispute resolution process agree, in writing, to waive the confidentiality;

2. To the extent necessary, in a subsequent action between the neutral ~~facilitator~~ or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution process; ~~or,~~

3. Statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in the dispute resolution procedure~~.~~;

4. Where a threat to inflict bodily injury is made;

5. Where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime;

6. Where an ethics complaint is made against the neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint;

7. Where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation;

8. Where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-576.12 of the Code of Virginia in a proceeding to vacate a mediated agreement; or

9. As provided by law or rule other than the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

E. The use of attorney work product in dispute resolution shall not result in a waiver of the attorney work product privilege.

F. Unless otherwise specified by the parties, no dispute resolution procedure shall be electronically or stenographically recorded.

9VAC20-15-100. Standards for and authority of neutral ~~facilitator~~.

A. A neutral ~~facilitator~~ participating in a dispute resolution procedure pursuant to this chapter shall comply with all provisions of this section. A neutral ~~facilitator~~ shall indicate compliance by filing with the director a signed, written statement as follows: "I agree to comply with Virginia's statutes and regulations governing dispute resolution, including § 10.1-1186.3 of the Code of Virginia and 9VAC20-15-10 et seq."

B. A neutral ~~facilitator~~ acting as a mediator shall adhere to the Judicial Council of Virginia's Standards of Ethics and Professional Responsibility for Certified Mediators, effective July 1, 2011, and the standards and duty provisions of § 8.01-581.24 of the Code of Virginia. A neutral conducting a nonmediation dispute resolution proceeding shall adhere to the requirements of § 8.01-576.9 of the Code of Virginia.

C. If a complaint is made to the director that a neutral ~~facilitator~~ has failed to comply with all the provisions of the applicable regulations, laws, and Judicial Council Standards during a dispute resolution proceeding, the director shall notify the neutral ~~facilitator~~ of the complaint and shall give the neutral ~~facilitator~~ 10 business days to respond in writing. If the director deems the response unsatisfactory, or if no response is made by the deadline, the director shall remove the neutral ~~facilitator~~ from the ongoing dispute resolution process. The parties to the terminated dispute resolution procedure shall decide whether to continue in the same dispute resolution procedure with a new neutral ~~facilitator~~, to begin a new dispute resolution procedure, or to forego further dispute resolution.

D. The recommendation of a neutral ~~facilitator~~ is not a case decision as defined in ~~§ 9-6.14:4~~ § 2.2-4001 of the Administrative Process Act and therefore may not be appealed.

9VAC20-15-110. Resumes of ~~neutral facilitators~~ neutrals and descriptions of dispute resolution programs.

The department may maintain a file containing the resumes of ~~neutral facilitators~~ neutrals and descriptions of dispute resolution programs. The file shall contain a disclaimer stating, "Inclusion of a resume or dispute resolution program description in this file does not constitute an endorsement of a neutral ~~facilitator~~ or a dispute resolution program, nor should negative implications be drawn from the fact that a ~~neutral facilitator's~~ neutral's resume or a dispute resolution program description is not included in this file. Parties are not obligated to choose a neutral ~~facilitator~~ or dispute resolution program from those whose resumes and descriptions are maintained in this file."

9VAC20-15-130. Referral of disputes to dispute resolution.

A. The board, consistent with the provisions of 9VAC20-15-40 G, may refer a dispute to dispute resolution.

B. A party other than the board may request dispute resolution by applying to the director.

1. The application shall contain the following:

a. A request for dispute resolution, specifying mediation or another dispute resolution procedure;

b. The names, postal addresses, telephone numbers, fax numbers, e-mail addresses, or other appropriate communication addresses or numbers of all known parties to the dispute and of their attorneys, if known; and

c. A statement of issues and a summary of the basis for the dispute.

2. Filing an application constitutes consent to referral of the dispute to dispute resolution.

3. Filing an application shall not stay any proceeding and shall have no effect on any procedural or substantive right of any party to the dispute.

4. Under normal circumstances, within 14 business days of the receipt of an application from a party requesting dispute resolution, the director shall review the application to determine if the dispute is suitable for dispute resolution, shall decide which form of dispute resolution is appropriate, and shall notify the parties in writing accordingly.

5. If the director has decided that mediation is appropriate, the provisions of Part III (9VAC20-15-140 et seq.) of this chapter shall apply.

6. If the director has decided that a dispute resolution proceeding other than mediation is appropriate, the director shall specify what that proceeding is.

The appointment of the neutral ~~facilitator~~ for this proceeding shall follow the procedure for the appointment of a mediator as specified in 9VAC20-15-140. The parties and the neutral ~~facilitator~~ shall determine the appropriate procedures for conducting this dispute resolution proceeding.

Part III
Mediation Procedures

9VAC20-15-140. Appointment of mediator.

A. If the director has decided that mediation is appropriate, any party may nominate a mediator.

B. If all parties agree with the nomination, the director shall appoint that person the mediator for the case and shall notify the parties accordingly.

C. If all parties do not agree with the nomination, the following procedure shall apply:

1. By a date specified by the director, each party shall name up to three mediators who would be acceptable to that party. These mediators may or may not have resumes on file with the department.

2. The director shall compile a list of the names submitted and send it to the parties.

3. Upon receipt of the list, each party may strike two names and return the list to the director within 14 business days following the date on which the list was mailed.

4. On the next business day after the 14-day period expires or as soon as practicable thereafter, the director shall appoint a mediator from the remaining list of names and shall notify the parties accordingly.

D. Once the mediator is appointed, the director shall send the mediator an acceptance form to sign and return. The acceptance form shall require the mediator to append his signature to the following statements:

1. That the mediator agrees to abide by the applicable dispute resolution and mediation statutes, regulations, and ethical standards;

2. That the mediator agrees to attempt to complete the mediation within 60 business days from the date of his appointment; and

3. That the mediator foresees no potential conflict of interest in agreeing to mediate the case. A determination of conflict of interest shall be made by the director or board on a case-by-case basis.

9VAC20-15-150. ~~Evaluation~~ Orientation session.

A. Once the mediator has been appointed, the board shall issue a referral to the mediator and the parties. This referral shall include a list of the information that the board, in its preliminary judgment, expects to use in making its final decision regarding the case. This list shall contain the caveat that the board may require other information as yet unspecified at some point in the future. All parties shall attend one ~~evaluation~~ orientation session with the mediator unless excused pursuant to subsection B of this section.

B. The board shall excuse a party from participation in the ~~evaluation~~ orientation session if, within 14 business days after issuance of the order of referral, a statement signed by the party is filed with the board. This statement shall declare that the mediation process has been explained to the party and that the party does not wish to participate in the ~~evaluation~~ orientation session.

C. The ~~evaluation~~ orientation session shall be conducted at any place within the Commonwealth of Virginia, at any time, and on any date convenient to the mediator and the parties.

D. At least seven business days before the ~~evaluation~~ orientation session, each party shall provide the mediator with a statement outlining his perspective on the facts and issues of the case. At the discretion of the mediator, these statements may be mutually exchanged by the parties.

E. During the ~~evaluation~~ orientation session, the parties, assisted by the mediator, shall determine the manner in which the issues in dispute shall be framed and addressed. In the absence of agreement by the parties, the mediator shall make this determination.

9VAC20-15-160. Continuation, termination, and resolution of mediation.

A. Following the ~~evaluation~~ orientation session, mediation shall proceed in any manner agreed on by the parties and the mediator in conformance with the provisions of ~~9VAC20-15-60~~ 9VAC20-15-50 through 9VAC20-15-80.

B. Mediation may be terminated through written notice by the permit applicant or the director at any time before settlement is reached.

C. Mediation shall continue if a party other than the permit applicant or the director chooses to opt out of mediation following the ~~evaluation~~ orientation session. A party who

chooses to opt out of mediation at any time following the ~~evaluation~~ orientation session or who, through nonattendance, is conclusively deemed to have dropped out of the dispute resolution procedure shall not be bound by any written settlement agreement resulting from the mediation but shall be bound by the cost provisions of 9VAC20-15-50 and the confidentiality provisions of 9VAC20-15-80.

D. If the mediation is terminated before settlement is reached, the parties shall resume the same status as before mediation and may proceed with the formal adjudication as if mediation had not taken place. The board shall not refer the case to mediation a second time.

E. If the mediation results in settlement, a written settlement agreement shall be signed and dated by each party or by that party's authorized representative.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC20-15)

~~Virginia Supreme Court, Judicial Council of Virginia, "Standards of Ethics and Professional Responsibility for Certified Mediators," October 2000.~~

Standards of Ethics and Professional Responsibility for Certified Mediators, Office of the Executive Secretary of the Supreme Court of Virginia, adopted by the Judicial Council of Virginia, effective July 1, 2011

VA.R. Doc. No. R15-4048; Filed May 27, 2015, 11:09 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-262).**

Statutory Authority: §§ 10.1-1402 and 10.1-1426 of the Code of Virginia; 42 USC § 6921 et seq.; 40 CFR Parts 260 through 272.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Debra Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.harris@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia and federal law.

Purpose: This amendment clarifies that the accumulation area notification requirement only applies to large quantity generators. This was the original intent of the regulation as well as the historical application. This amendment leads to the regulation being in line with that intended application while providing clarity to the regulated community since as written it could be applied to small quantity generators, which is not the intent of the regulation. This regulatory amendment clarifies the requirements for the proper accumulation of hazardous waste and, therefore, provides protection for the public health and welfare by ensuring that hazardous waste is properly accumulated and managed.

Rationale for Using Fast-Track Process: The proposed amendment is expected to be noncontroversial, and therefore using the fast-track rulemaking process is justified.

Substance: The accumulation notification requirements have been clarified to insure proper application to large quantity generators only.

Issues: The regulatory amendment clarifies the accumulation requirements for hazardous waste generator and, in so doing, provides an advantage to the hazardous waste generators and the agency in the proper application of these requirements. There is no disadvantage to the public or the Commonwealth that will result from the adoption of these amendments to 9VAC20-60.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to amend the Hazardous Waste Regulations in order to make clear that the hazardous waste accumulation area notification requirement does not apply to small quantity generators.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The Board's proposal to add clarifying language in the regulation does not change requirements. It creates no costs and is potentially beneficial in that it may reduce the likelihood of confusion over the law.

Businesses and Entities Affected. The proposed amendment is a clarification and does not change requirements. The regulation pertains to the 318 large quantity generators of hazardous waste regulated in the Commonwealth. The Department of Environmental Quality estimates that approximately half of these entities are small businesses.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment is unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment is unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendment is unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment will not adversely affect small businesses.

Real Estate Development Costs. The proposed amendment is unlikely to significantly affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

The amendments clarify that the hazardous waste accumulation area notification requirement does not apply to small quantity generators.

9VAC20-60-262. Adoption of 40 CFR Part 262 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 262 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials, and other ancillaries that are parts of 40 CFR Part 262 are also hereby incorporated as parts of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 262 is incorporated by reference, the following additions, modifications, and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 262.42(a)(2), the words "for the Region in which the generator is located" is deleted from the incorporated text and is not a part of these regulations.

2. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56, and 40 CFR 262.57, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56, and 40 CFR 262.57, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. For accumulation areas established before March 1, 1988, ~~a generator who is not otherwise exempted by 40 CFR 261.5~~ all large quantity generators shall notify the department of each location where he accumulates hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the department and document in the operating record that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon the establishment of each 90-day accumulation area. In the case of a new large quantity generator who creates such accumulation areas after March 1, 1988, he shall notify the department at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. This notification shall specify the exact location of the 90-day accumulation area at the site.

5. In addition to the requirements in 40 CFR Part 262, management of hazardous wastes is required to comply with the Regulations Governing the Transportation of Hazardous Materials (9VAC20-110), including packaging and labeling for transport.

6. A generator shall not offer his hazardous waste to a transporter that has not received an EPA identification

number or to a facility that has not received a permit and an EPA identification number.

7. In 40 CFR 262.24, 40 CFR 262.25, and 40 CFR Part 262, Subpart H, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency.

8. In addition to the requirements of this section, large quantity generators are required to pay an annual fee. The fee schedule and fee regulations are contained in Part XII (9VAC20-60-1260 through 9VAC20-60-1286) of this chapter.

9. Within 40 CFR 262.24, the reference to "system" means the United States Environmental Protection Agency's national electronic manifest system.

10. Regardless of the provisions of 9VAC20-60-18, the requirements of 40 CFR 262.24(g) are not incorporated into this chapter.

VA.R. Doc. No. R15-3905; Filed May 27, 2015, 11:22 a.m.

STATE WATER CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC25-15. Regulation for Dispute Resolution (Rev. 1) (amending 9VAC25-15-20 through 9VAC25-15-80, 9VAC25-15-100, 9VAC25-15-110, 9VAC25-15-130 through 9VAC25-15-160).**

Statutory Authority: § 10.1-1186.3 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Debra Harris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.harris@deq.virginia.gov.

Basis: This regulation is promulgated under the authority of § 10.1-1186.3 D of the Code of Virginia, which requires the State Water Control Board to adopt regulations for the conduct of mediation and dispute resolution in accordance with the provisions of § 10.1-1186.3. There is no discretion. Additionally, the board's overall authority is provided in § 62.1-44.15 of the State Water Control Law, which authorizes the board to promulgate regulations necessary to carry out its powers and duties.

Purpose: This regulation enhances the public health and welfare by expediting the resolution of environmental disputes in a manner that is less adversarial and less costly. Statutory provisions cited in the authorizing provisions of § 10.1-1186.3 of the Code of Virginia were revised after the effective date of this regulation. Therefore, 9VAC25-15 is amended as necessary for the changes made to the statutory requirements for dispute resolution and mediation in Title 8.01 of the Code of Virginia.

Rationale for Using Fast-Track Process: The amendments are not expected to be controversial as it is necessary to revise the regulation due to (i) changes to statutory provisions, (ii) revised regulatory citations, and (iii) an update of the mediation standards (document incorporated by reference).

Substance: The changes to the regulations include revised and additional requirements for dispute resolution and mediation under Title 8.01 of the Code of Virginia and an update to the document incorporated by reference.

Issues: The advantage of the amendments to the agency and the public is the elimination of any confusion that may arise from regulatory text that differs from the statute. There are no disadvantages to the public or the Commonwealth associated with this regulatory action.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. This regulation has not been changed since it was first promulgated in 2001. Since then the statutory requirements for dispute resolution and mediation under Chapter 20.2 and Chapter 21.2 of Title 8.01 of the Code of Virginia have been amended. Therefore the State Water Control Board (Board) proposes several amendments to this regulation in order to reflect changes made to Title 8.01 of the Code of Virginia. In addition, the Board proposes to update the reference to the Virginia Supreme Court, Judicial Council of Virginia, "Standards of Ethics and Professional Responsibility for Certified Mediators" to reflect the latest version.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The proposed amendments to this regulation will make the regulation consistent with statutes and will not change effective law. Amending the regulation to reflect the law in effect will be beneficial in that it will reduce the likelihood that readers of the regulation (who do not also read the relevant statutes) will be misled as toward the actual law in effect.

Businesses and Entities Affected. This regulation potentially affects individuals, businesses or other entities that have a significant disagreement with the Board over a regulation development or permit issuance. The regulation was first promulgated in 2001 and thus far the mediation and alternative dispute resolution proceedings of this chapter have not been utilized. There are approximately 2100 active individual permits through the Board's programs.[1]

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not create an adverse impact for small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

[1] Data source: Department of Environmental Quality

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

Summary:

The amendments (i) conform the regulation to changes in Chapters 20.2 (§ 8.01-576.4 et seq.) and 21.2 (§ 8.01-581.21 et seq.) of Title 8.01 of the Code of Virginia; (ii) update the incorporated mediation standards to reflect the edition effective July 1, 2011; and (iii) update terminology and citations.

9VAC25-15-20. Terms defined.

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

"Conciliation" means a process in which a neutral ~~facilitator~~ facilitates settlement by clarifying issues and serving as an intermediary for negotiations in a manner that is generally more informal and less structured than mediation.

"Department" means the Department of Environmental Quality.

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

"Dispute resolution," "dispute resolution procedure," or "dispute resolution proceeding~~,~~" ~~or "dispute resolution service"~~ means any structured process in which a neutral ~~facilitator~~ assists disputants in reaching a voluntary settlement by means of dispute resolution techniques such as mediation, conciliation, early neutral evaluation, nonjudicial settlement conferences, or any other proceeding leading to a voluntary settlement conducted consistent with the requirements of this chapter. The term includes the ~~evaluation~~ orientation session.

"Dispute resolution program" means a program that offers dispute resolution services to the public that is run by the Commonwealth or any private for-profit or not-for-profit (including nonprofit) organization, political subdivision, or public corporation, or a combination of these.

"Dispute resolution services" includes screening and intake of disputants, conducting dispute resolution proceedings, drafting agreements, and providing information or referral services.

~~"Evaluation session" means a preliminary meeting during which the parties and the neutral facilitator assess the case and decide whether to continue with a dispute resolution proceeding or with adjudication.~~

"Mediation" means a process ~~by which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy and includes all contacts between the mediator and any party or parties, until such time as a resolution is agreed to by the parties or the parties discharge the mediator~~ in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the

parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.

"Mediator" means a neutral ~~facilitator~~ who is an impartial third party selected by agreement of the parties to a controversy to assist them in mediation. As used in this chapter, this word may refer to a single person or to two or more people.

"Neutral ~~facilitator~~" means a person who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services. As used in this chapter, this word may refer to a single person or to two or more people.

"Orientation session" means a preliminary meeting during which the dispute resolution proceeding is explained to the parties and the parties and the neutral assess the case and decide whether to continue with a dispute resolution proceeding or adjudication.

"Party" means an interested person who has chosen to be and who is eligible to be a disputant in a dispute resolution proceeding. An interested person is eligible if he (i) has attended a public meeting or public hearing on the permit or regulation in dispute and is therefore named in the public record, (ii) is the applicant for the permit in dispute, or (iii) is the department.

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

"Virginia Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.), Chapter 3.2 (§ 62.1-44.36 et seq.), Chapter 24 (§ 62.1-242 et seq.), and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Part II
General Provisions

9VAC25-15-30. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of this chapter, unless specified otherwise, shall apply in the administration of all regulations of the board to the extent not covered by a specific regulation of the board. In cases where the provisions of this chapter conflict with another regulation of the board, the provisions of the other regulation shall apply.

C. No provision of this chapter shall limit the power of the board to take appropriate action as necessary to carry out its duties under the Virginia Water Control Law.

D. By the adoption of this chapter, the board confers upon the director the administrative, enforcement, and decision-making authority articulated in this chapter.

E. Nothing in this chapter shall create or alter any right, action, or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act ~~(§ 9-6.14:1 et seq.)~~ (§ 2.2-4000 et seq. of the Code of Virginia), with applicable federal law, or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

F. For a permit in dispute, dispute resolution may not be initiated after the final permit is issued. For a regulation in dispute, dispute resolution may not be initiated after the final regulation is adopted.

9VAC25-15-40. Purpose and scope.

A. This chapter shall be construed to encourage the fair, expeditious, voluntary, consensual resolution of disputes. It shall not be construed to preclude collaborative community problem solving.

B. Dispute resolution shall be used to resolve only those disputes that reveal significant issues of disagreement among parties and may be used unless the board decides that it is not in the public interest to do so.

C. The decision to employ dispute resolution is in the board's sole discretion and is not subject to judicial review.

D. The outcome of any dispute resolution procedure shall not be binding upon the board but may be considered by the board in issuing a permit or promulgating a regulation.

E. Dispute resolution may be used to resolve a dispute relating to the promulgation, amendment, or repeal of a regulation that is subject to the public participation process prescribed in Article 2 ~~(§ 9-6.14:7.1 et seq.)~~ (§ 2.2-4006 et seq. of the Code of Virginia) of the Administrative Process Act.

F. Dispute resolution may be used to resolve a dispute involving any process relating to the issuance of a permit. Dispute resolution may be used in this case only with the consent and participation of the permit applicant and may be terminated at any time at the request of the permit applicant.

G. The board shall consider not using dispute resolution in the circumstances listed in § 10.1-1186.3 A of the Code of Virginia.

9VAC25-15-50. Costs.

A. Compensation of the neutral ~~facilitator~~ and any other associated common costs, such as rental fees, shall be the responsibility of the parties. Compensation of each party's counsel and other individual costs shall be the responsibility of that party alone, unless the parties agree otherwise.

B. An agreement regarding compensation and other associated costs shall be reached between the neutral ~~facilitator~~ and the parties before the dispute resolution procedure commences and shall be memorialized in writing.

C. In the absence of an agreement to the contrary, all costs shall be paid by the parties in equal shares.

9VAC25-15-60. Date, time, and place.

The dispute resolution procedure shall be conducted in any place within the Commonwealth of Virginia, on any date, and at any time agreeable to the parties and the neutral ~~facilitator~~.

9VAC25-15-70. Attendance at the dispute resolution procedure.

A. All parties shall attend all sessions of the dispute resolution procedure. Any party who fails to attend any session shall be conclusively deemed to have dropped out of the dispute resolution procedure. A party may satisfy the attendance requirement by sending a representative familiar with the facts of the case. This representative shall have the authority to negotiate and to recommend settlement to the party that he represents.

B. Any party may have the assistance of an attorney or other representative during any session of the dispute resolution procedure.

C. Persons who are not parties or representatives of parties may attend dispute resolution sessions only with the permission of all parties and with the consent of the neutral ~~facilitator~~.

9VAC25-15-80. Confidentiality.

A. The provisions of § 8.01-576.10 of the Code of Virginia concerning the confidentiality of dispute resolution shall govern all dispute resolution proceedings held pursuant to this chapter except when the board uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation. The board shall inform the parties in the order of referral issued under 9VAC25-15-150 what this information is expected to be. If the board later decides that it will need additional information before it can issue the permit or promulgate the regulation, it shall so notify the parties as expeditiously as possible. If any of the information requested by the board would normally be protected by the confidentiality provisions of this section, the parties shall waive that protection when delivering the requested information to the board. Notwithstanding the above, any information qualifying as confidential under the ~~State~~ Virginia Water Control Law shall remain confidential.

B. With the exception noted in subsection A of this section, all memoranda, work products, ~~or~~ and other materials contained in the case files of a neutral ~~facilitator~~ or dispute resolution program are confidential. Any communication made during dispute resolution that relates to the controversy ~~or the proceeding~~, including screening, intake, and scheduling a dispute resolution proceeding, whether made to the neutral ~~facilitator~~ or dispute resolution program staff, to a party, or to any other person, is confidential. Any party's lack of consent to participate in the dispute resolution process, at any point in the process, is confidential.

C. A written settlement agreement shall not be confidential, unless the parties otherwise agree in writing.

D. Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except:

1. When all parties to the dispute resolution process agree, in writing, to waive the confidentiality;

2. To the extent necessary, in a subsequent action between the neutral ~~facilitator~~ or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution process; ~~or,~~

3. Statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in the dispute resolution procedure~~.~~;

4. Where a threat to inflict bodily injury is made;

5. Where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime;

6. Where an ethics complaint is made against the neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint;

7. Where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation;

8. Where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-576.12 of the Code of Virginia in a proceeding to vacate a mediated agreement; or

9. As provided by law or rule other than the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

E. The use of attorney work product in dispute resolution shall not result in a waiver of the attorney work product privilege.

F. Unless otherwise specified by the parties, no dispute resolution procedure shall be electronically or stenographically recorded.

9VAC25-15-100. Standards for and authority of neutral ~~facilitator~~.

A. A neutral ~~facilitator~~ participating in a dispute resolution procedure pursuant to this chapter shall comply with all provisions of this section. A neutral ~~facilitator~~ shall indicate compliance by filing with the director a signed, written statement as follows: "I agree to comply with Virginia's statutes and regulations governing dispute resolution, including § 10.1-1186.3 of the Code of Virginia and 9VAC25-15-10 et seq."

B. A neutral ~~facilitator~~ acting as a mediator shall adhere to the Judicial Council of Virginia's Standards of Ethics and Professional Responsibility for Certified Mediators, effective July 1, 2011, and the standards and duty provisions of § 8.01-581.24 of the Code of Virginia. A neutral conducting a nonmediation dispute resolution proceeding shall adhere to the requirements of § 8.01-576.9 of the Code of Virginia.

C. If a complaint is made to the director that a neutral ~~facilitator~~ has failed to comply with all the provisions of the

applicable regulations, laws, and Judicial Council Standards during a dispute resolution proceeding, the director shall notify the neutral ~~facilitator~~ of the complaint and shall give the neutral ~~facilitator~~ 10 business days to respond in writing. If the director deems the response unsatisfactory, or if no response is made by the deadline, the director shall remove the neutral ~~facilitator~~ from the ongoing dispute resolution process. The parties to the terminated dispute resolution procedure shall decide whether to continue in the same dispute resolution procedure with a new neutral ~~facilitator~~, to begin a new dispute resolution procedure, or to forego further dispute resolution.

D. The recommendation of a neutral ~~facilitator~~ is not a case decision as defined in ~~§ 9-6.14:4~~ § 2.2-4001 of the Administrative Process Act and therefore may not be appealed.

9VAC25-15-110. Resumes of ~~neutral facilitators~~ neutrals and descriptions of dispute resolution programs.

The department may maintain a file containing the resumes of ~~neutral facilitators~~ neutrals and descriptions of dispute resolution programs. The file shall contain a disclaimer stating, "Inclusion of a resume or dispute resolution program description in this file does not constitute an endorsement of a neutral ~~facilitator~~ or a dispute resolution program, nor should negative implications be drawn from the fact that a ~~neutral facilitator's~~ neutral's resume or a dispute resolution program description is not included in this file. Parties are not obligated to choose a neutral ~~facilitator~~ or dispute resolution program from those whose resumes and descriptions are maintained in this file."

9VAC25-15-130. Referral of disputes to dispute resolution.

A. The board, consistent with the provisions of 9VAC25-15-40 G, may refer a dispute to dispute resolution.

B. A party other than the board may request dispute resolution by applying to the director.

1. The application shall contain the following:

a. A request for dispute resolution, specifying mediation or another dispute resolution procedure;

b. The names, postal addresses, telephone numbers, fax numbers, e-mail addresses, or other appropriate communication addresses or numbers of all known parties to the dispute and of their attorneys, if known; and

c. A statement of issues and a summary of the basis for the dispute.

2. Filing an application constitutes consent to referral of the dispute to dispute resolution.

3. Filing an application shall not stay any proceeding and shall have no effect on any procedural or substantive right of any party to the dispute.

4. Under normal circumstances, within 14 business days of the receipt of an application from a party requesting dispute resolution, the director shall review the application to determine if the dispute is suitable for dispute resolution, shall decide which form of dispute resolution is appropriate, and shall notify the parties in writing accordingly.

5. If the director has decided that mediation is appropriate, the provisions of Part III (9VAC25-15-140 et seq.) of this chapter shall apply.

6. If the director has decided that a dispute resolution proceeding other than mediation is appropriate, the director shall specify what that proceeding is. The appointment of the neutral ~~facilitator~~ for this proceeding shall follow the procedure for the appointment of a mediator as specified in 9VAC25-15-140. The parties and the neutral ~~facilitator~~ shall determine the appropriate procedures for conducting this dispute resolution proceeding.

Part III
Mediation Procedures

9VAC25-15-140. Appointment of mediator.

A. If the director has decided that mediation is appropriate, any party may nominate a mediator.

B. If all parties agree with the nomination, the director shall appoint that person the mediator for the case and shall notify the parties accordingly.

C. If all parties do not agree with the nomination, the following procedure shall apply:

1. By a date specified by the director, each party shall name up to three mediators who would be acceptable to that party. These mediators may or may not have resumes on file with the department.

2. The director shall compile a list of the names submitted and send it to the parties.

3. Upon receipt of the list, each party may strike two names and return the list to the director within 14 business days following the date on which the list was mailed.

4. On the next business day after the 14-day period expires or as soon as practicable thereafter, the director shall appoint a mediator from the remaining list of names and shall notify the parties accordingly.

D. Once the mediator is appointed, the director shall send the mediator an acceptance form to sign and return. The acceptance form shall require the mediator to append his signature to the following statements:

1. That the mediator agrees to abide by the applicable dispute resolution and mediation statutes, regulations, and ethical standards;

2. That the mediator agrees to attempt to complete the mediation within 60 business days from the date of his appointment; and

3. That the mediator foresees no potential conflict of interest in agreeing to mediate the case. A determination of conflict of interest shall be made by the director or board on a case-by-case basis.

9VAC25-15-150. ~~Evaluation~~ Orientation session.

A. Once the mediator has been appointed, the board shall issue a referral to the mediator and the parties. This referral shall include a list of the information that the board, in its preliminary judgment, expects to use in making its final decision regarding the case. This list shall contain the caveat that the board may require other information as yet unspecified at some point in the future. All parties shall attend one ~~evaluation~~ orientation session with the mediator unless excused pursuant to subsection B of this section.

B. The board shall excuse a party from participation in the ~~evaluation~~ orientation session if, within 14 business days after issuance of the order of referral, a statement signed by the party is filed with the board. This statement shall declare that the mediation process has been explained to the party and that the party does not wish to participate in the ~~evaluation~~ orientation session.

C. The ~~evaluation~~ orientation session shall be conducted at any place within the Commonwealth of Virginia, at any time, and on any date convenient to the mediator and the parties.

D. At least seven business days before the ~~evaluation~~ orientation session, each party shall provide the mediator with a statement outlining his perspective on the facts and issues of the case. At the discretion of the mediator, these statements may be mutually exchanged by the parties.

E. During the ~~evaluation~~ orientation session, the parties, assisted by the mediator, shall determine the manner in which the issues in dispute shall be framed and addressed. In the absence of agreement by the parties, the mediator shall make this determination.

9VAC25-15-160. Continuation, termination, and resolution of mediation.

A. Following the ~~evaluation~~ orientation session, mediation shall proceed in any manner agreed on by the parties and the mediator in conformance with the provisions of ~~9VAC25-15-60~~ 9VAC25-15-50 through 9VAC25-15-80.

B. Mediation may be terminated through written notice by the permit applicant or the director at any time before settlement is reached.

C. Mediation shall continue if a party other than the permit applicant or the director chooses to opt out of mediation following the ~~evaluation~~ orientation session. A party who chooses to opt out of mediation at any time following the ~~evaluation~~ orientation session shall not be bound by any written settlement agreement resulting from the mediation but shall be bound by the cost provisions of 9VAC25-15-50 and the confidentiality provisions of 9VAC25-15-80.

D. If the mediation is terminated before settlement is reached, the parties shall resume the same status as before mediation and may proceed with the formal adjudication as if mediation had not taken place. The board shall not refer the case to mediation a second time.

E. If the mediation results in settlement, a written settlement agreement shall be signed and dated by each party or by that party's authorized representative.

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-15)

~~Virginia Supreme Court, Judicial Council of Virginia, "Standards of Ethics and Professional Responsibility for Certified Mediators," October 2000.~~

Standards of Ethics and Professional Responsibility for Certified Mediators, Office of the Executive Secretary of the Supreme Court of Virginia, adopted by the Judicial Council of Virginia, effective July 1, 2011

VA.R. Doc. No. R15-3795; Filed May 27, 2015, 11:10 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-101. Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation (amending 9VAC25-101-40, 9VAC25-101-50; repealing 9VAC25-101-70).**

Statutory Authority: §§ 62.1-44.15, 62.1-44.34:16, and 62.1-44.34:21 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4319, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia requires operators of tank vessels that are transporting or transferring oil as cargo upon state waters to develop contingency plans. Section 62.1-44.16 of the Code of Virginia requires financial responsibility to be provided by an operator of a tank vessel demonstrating the owner's financial stability to conduct a proper response to a discharge of oil. These requirements are applicable to tank vessels that have a maximum storage, handling, or transporting capacity of 15,000 gallons or more. The State Water Control Board previously adopted this regulation to implement these statutory requirements.

The federal Oil Pollution Act of 1990 also places requirements on vessels that are over 300 gross tons that transport oil. The Oil Pollution Act of 1990 requires vessels to have vessel response plans and to obtain a Certificate of Financial Responsibility from the U.S. Coast Guard. Virginia's statute recognizes the requirements of the Oil Pollution Control Act of 1990 and deems vessels in compliance with Virginia requirements if they have a vessel response plan approved by the U.S. Coast Guard or a Certificate of Financial Responsibility, as applicable.

Purpose: This regulatory amendment is needed to update the regulation to conform to statutory requirements, add clarity to the regulation, and remove an obsolete section. This regulation establishes requirements for spill response plans to be developed and requires vessels to provide financial assurance. These requirements are essential to protecting the health, safety, and welfare of citizens by requiring vessels to develop plans to address spills before they occur and to be financially able to take action to remediate any spills that occur. This promotes a faster response to clean-up any spills that may occur, minimizing the potential impacts on the environment.

Rationale for Using Fast-Track Process: The amendments are minor changes to conform to state statute, clarify a regulatory requirement, correct a statutory citation, and remove an outdated regulatory review procedure. These changes are expected to be noncontroversial since they do not place any additional regulatory requirements on the regulated community.

Substance: The changes to the regulation are minor and are not substantive and are as follows:

- The ability of the State Water Control Board to revoke the approval of an Oil Discharge Contingency Plan (ODCP) if a vessel is no longer operating is being removed since it is not listed as a reason the State Water Control Board may revoke an ODCP.
- The regulation is being revised to clarify that if a vessel's financial assurance has been approved by the U.S. Coast Guard, no financial assurance is required to be provided to Virginia.
- An incorrect citation is being corrected.

The regulation is being modified to remove the obsolete section that requires the regulation to be reviewed every three years. Regulations are now reviewed as required by the Governor's executive order that is in place as well as the Administrative Process Act.

Issues: There are no advantages or disadvantages to the public, the agency, or Commonwealth as the amendments are minor and not substantive.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to: 1) revise language to clarify that tank vessel operators may meet financial assurance requirements by having a Certificate of Financial Responsibility approved by the U.S. Coast Guard, 2) correct a Code of Virginia citation, 3) repeal obsolete regulatory language, and 4) repeal one listed cause for revocation of an oil discharge contingency plan.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The proposals to revise language to clarify that tank vessel operators may meet financial assurance requirements by having a Certificate of Financial Responsibility approved by the U.S. Coast Guard, correct a Code of Virginia citation, and repeal obsolete regulatory language will all have no impact on requirements for tank vessel operators (or anyone else). These proposed amendments are all moderately beneficial in that they may reduce some potential confusion amongst the interested public.

Code of Virginia § 62.1-44.34:15 lists the Board's authority to revoke an oil discharge contingency plan. The statute does not identify a vessel no longer in operation as a reason the Board may revoke an oil discharge contingency plan (ODCP). Thus the Board proposes to remove "The tank vessel is no longer in operation" from the regulation's list of causes to revoke an ODCP. According to the Department of Environmental Quality, the Board has never revoked an ODCP due to a vessel no longer being in operation. Since it has been determined that the Board did not have this authority anyway, repealing this language will also be beneficial in that the regulatory language will more accurately reflect requirements and regulatory authority in practice.

Businesses and Entities Affected. The regulation applies to all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of equal to or greater than 15,000 gallons of oil. Currently two tank vessel operators are required to provide financial assurance to Virginia for their vessels. All other vessels are meeting the requirements of Virginia's regulation through complying with the Oil Pollution Act of 1990.

Localities Particularly Affected. The regulation applies to all state waters, but particularly affects coastal localities and localities with navigable rivers that are frequented by oil tank vessels.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not create an adverse impact for small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the

proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

The amendments (i) revise language to clarify that tank vessel operators may meet financial assurance requirements by having a Certificate of Financial Responsibility approved by the U.S. Coast Guard, (ii) correct a Code of Virginia citation, (iii) repeal obsolete regulatory language, and (iv) repeal one listed cause for revocation of an oil discharge contingency plan.

9VAC25-101-40. Board oil discharge contingency plan review and approval.

A. Tank vessel oil discharge contingency plans shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the vessel) at the time the plan is submitted for approval, be written in English, and, in order to be approvable, shall contain, at a minimum, the following information:

1. The vessel name, country of registry, identification number, date of build and certificated route of the vessel.

2. The names of the vessel operators including address and phone number.

3. If applicable, name of local agent, address and phone number.

4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil, or groups of oil with similar characteristics, transported or transferred by the tank vessel. To be equivalent, the submission must contain the following:

a. Generic or chemical name of the oil;

b. Hazards involved in handling the oil; and

c. A list of firefighting procedures and extinguishing agents effective with fires involving each oil or groups of oil demonstrating similar hazardous properties which require the same firefighting procedures.

5. A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in event of a discharge.

6. The position title of the individual(s) responsible for making the required notifications and a copy of the notification check-off list. The individual(s) must be fluent in English.

7. The position title, address and phone number of the individual(s) authorized to act on behalf of the operator to implement containment and cleanup actions. The individual(s) must be fluent in English and shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated.

8. The position title of the individual(s) designated by the operator to ensure compliance during containment and cleanup of a discharge, with applicable federal, state and local requirements for disposal of both solid and liquid wastes.

9. A copy of the valid evidence of financial responsibility pursuant to 9VAC25-101-45.

10. A complete description of the vessel including vessel drawings providing a complete view of the location of all cargo tanks as well as the location of fuels and other oils carried in bulk by the vessel.

11. A complete description of each oil transfer system on the vessel, including:

a. A line diagram of the vessel's oil transfer piping, including the location of each valve, pump, control device, vent, safety device and overflow;

b. The location of the shutoff valve or other isolation device that separates any bilge or ballast system from the oil transfer system; and

c. The maximum pressure for each oil transfer system.

12. Identification and ~~ensurance1~~ ensurance by contract, or other means acceptable to the board, of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall ensure a certain response within the shortest feasible time. The department will accept a letter of understanding between the operator and response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision 14 of this subsection shall be included unless these capabilities are already on file with the department.

13. Assessment of the worst case discharge, including measures to limit the outflow of oil, response strategy and operational plan. For the purpose of this chapter, the worst case discharge for a tank vessel is a discharge in adverse weather conditions of its entire cargo.

14. Inventory of onboard containment equipment, including specification of quantity, type, location, time limits for gaining access to the equipment, and, if applicable, identification of tank vessel personnel trained in its use.

15. If applicable, a copy of the United States Coast Guard approved oil transfer procedures and International Oil Pollution Prevention Certificate (IOPP).

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge, or the substantial threat of a discharge.

17. The tank vessel's cargo inventory control procedures. Tank vessel operators shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards.

18. A post discharge review procedure to assess the discharge response in its entirety.

B. All nonexempt tank vessel operators shall file with the department the Application for Approval of a Tank Vessel Contingency Plan form available from the department for approval of the contingency plan. This form identifies the tank vessel operator by name and address and provides information on the tank vessel or vessels and shall be submitted with the required contingency plan and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form which certifies to the board that the information is true and accurate. If the operator is a corporation, the application form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the application form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the application form must be signed by a general partner or the sole proprietor.

C. Contingency plans must be filed with and approved by the board. A signed original shall be submitted to the department at the address specified in subsection F of this section. A copy of the original with the tank vessel specific information and the approval letter shall be retained on the tank vessel and shall be readily available for inspection. An operator of a tank vessel whose normal operating route does not include entry into state waters shall certify to the board, within 24 hours of entering state waters, that the operator has ensured by contract or other means acceptable to the board, the availability of personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent the discharge or the substantial threat of a discharge. The operator shall submit a contingency plan to the board for approval in accordance with this chapter prior to the next entry of the tank vessel into state waters.

D. An operator of multiple tank vessels may submit a single fleet contingency plan. The plan shall contain vessel specific information required by this section for each vessel. The vessel specific information shall be included in appendices to the plan. This plan shall be separate from any required facility contingency plan.

E. Oil discharge contingency plans shall be reviewed, updated if necessary, and resubmitted to the board for approval every 60 months unless significant changes occur sooner. Operators must notify the department of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

1. A change of operator of the tank vessel or individual authorized to act on behalf of the operator;

2. A substantial increase in the maximum storage or handling capacity of the tank vessel;

3. A material decrease in the availability of private personnel or equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge;

4. A change in the type of product transported or transferred in or by any tank vessel covered by the plan for which a MSDS or its equivalent has not been submitted; or

5. The addition of a tank vessel to a single fleet contingency plan provided this requirement can be met by submittal of a new or amended appendix to the plan.

Renewals for expiring plans shall be submitted to the board for review and approval not less than 90 days prior to expiration of the current plan.

F. All applications and written communications concerning changes, submissions and updates of plans required by this chapter, with the exception of applications and submissions accompanied by fees addressed in subsection J of this section, shall be addressed as follows:

Mailing Address:

Virginia Department of Environmental Quality

Office of Spill Response and Remediation

P.O. Box 1105

Richmond, VA 23218

Location Address:

Virginia Department of Environmental Quality

Office of Spill Response and Remediation

629 East Main Street

Richmond, VA 23219

All applications and submissions accompanied by fees as addressed in subsection J of this section shall be sent to the addressed listed in subdivision J 2.

G. An oil discharge exercise may be required by the board to demonstrate the tank vessel's ability to implement the contingency plan. The department will consult with the operator of the vessel prior to initiating an exercise. Where appropriate, the department will ensure coordination with federal agencies prior to initiation of an exercise.

H. The board may, after notice and opportunity for a conference pursuant to § 2.2-4019 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan if it determines that:

1. The plan as submitted fails to provide sufficient information for the department to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of a discharge, and to contain and cleanup an oil discharge within the shortest feasible time;

2. A significant change has occurred in the operation of the tank vessel covered by the plan;

3. The tank vessel's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or

4. There has been a significant change in the best available technology since the plan was approved.

I. The board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved; or

3. A term or condition of approval or of this chapter has been violated~~; or~~.

~~4. The tank vessel is no longer in operation.~~

J. An application for approval of an oil discharge contingency plan will be accepted only when the fee established by this section has been paid.

1. Fees shall be paid by operators of tank vessels subject to this chapter upon initial submittal of an oil discharge contingency plan to the board. Renewals, additions, deletions or changes to the plan are not subject to the administrative fee.

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to the Treasurer of Virginia. All applications and submissions accompanying fees shall be sent to:

Mailing Address:

Virginia Department of Environmental Quality

Office of Financial Management

P.O. Box 1105

Richmond, VA 23218

Location Address:

Virginia Department of Environmental Quality

Office of Financial Management

629 East Main Street

Richmond, VA 23219

3. Application fees for approval of tank vessel contingency plans are as follows:

a. For a tank vessel with a maximum storage, handling or transporting capacity of 15,000 gallons and up to and including 250,000 gallons of oil the fee is $718;

b. For a tank vessel with a maximum storage, handling or transporting capacity greater than 250,000 gallons and up to and including 1,000,000 gallons of oil the fee is $2,155; and

c. For a tank vessel with a maximum storage, handling or transporting capacity greater than 1,000,000 gallons of oil the fee is $3,353.

4. The fee for approval of contingency plans encompassing more than one tank vessel, as authorized by subsection D of this section, shall be based on the aggregate capacity of the tank vessels.

5. Application fees are refundable upon receipt of a written request for withdrawal of the plan and fee refund no later than 30 days after submittal and prior to approval of the plan.

6. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

9VAC25-101-50. Board financial responsibility demonstration.

A. The operator of any tank vessel entering upon state waters that does not have a Certificate of Financial Responsibility approved by the U.S. Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990 (33 USC § 1321) shall deposit with the board cash or its equivalent in the amount of $500 per gross ton of such vessel. If the operator owns or operates more than one tank vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the vessel having the greatest maximum liability.

1. All documents submitted shall be in English and all monetary terms shall be in United States currency.

2. A copy of the board's acceptance of the required evidence of financial responsibility shall be kept on the tank vessel and readily available for inspection.

B. If the board determines that oil has been discharged in violation of applicable state law or there is a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under such law.

C. Operators of tank vessels may obtain exemption from the cash deposit requirement if evidence of financial responsibility is provided in an amount equal to the cash deposit required for such tank vessel pursuant to § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The following means of providing such evidence, or any combination thereof, will be acceptable:

1. Self-insurance. Any operator demonstrating financial responsibility by self-insurance shall provide evidence of such self-insurance in a manner that is satisfactory to the board. An operator demonstrating self-insurance shall:

a. Maintain, in the United States, working capital and net worth each in the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

(1) Maintenance of the required working capital and net worth shall be demonstrated by submitting with the application form an annual, current nonconsolidated balance sheet and an annual, current nonconsolidated statement of income and surplus certified by an independent certified public accountant. Those financial statements shall be for the operator's last fiscal year preceding the date of application and shall be accompanied by an additional statement from the operator's treasurer (or equivalent official) certifying to both the amount of current assets and the amount of total assets included in the accompanying balance sheet which are located in the United States and are acceptable for purposes of this chapter.

(2) If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by an additional statement by the involved certified public accountant certifying to the amount by which the operator's assets, located in the United States and acceptable under this subsection C, exceed total liabilities and that current assets, located in the United States and acceptable under this subsection C, exceed its current liabilities.

(3) When the operator's demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the operator's treasurer (or equivalent official) covering the first six months of the operator's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have fallen below the required amounts during the first six months.

(4) Additional financial information shall be submitted upon request by the department; or

b. Provide evidence in the form of a marine insurance broker's certificate of insurance, certificate of entry, or other proof satisfactory to the board that the operator has obtained oil pollution liability coverage through an operator's membership in a Protection & Indemnity (P&I) Club that is a member of the international group of P&I clubs or through coverage provided by a pool of marine underwriters in an amount sufficient to meet the requirements of § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

2. Insurance. Any operator demonstrating evidence of financial responsibility by insurance shall provide evidence of insurance issued by an insurer licensed, approved, or otherwise authorized to do business in the Commonwealth of Virginia. The amount of insurance shall be sufficient to cover the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The operator shall provide evidence of such coverage in the form of a marine insurance broker's certificate of insurance or by utilizing a form worded identically to the Insurance Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department. The insurer must also comply with all requirements in the form available from the department.

3. Surety. Any operator demonstrating financial responsibility through a surety bond shall file a surety bond utilizing a form worded identically to the surety form available from the department. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and must possess an underwriting limitation at least equal to the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The surety must also comply with all requirements in the Surety Bond Form Furnished as Evidence of Financial Responsibility in Respect of

Liability for Discharge of Oil available from the department.

4. Guaranty. An operator demonstrating financial responsibility through a guaranty shall submit the guaranty worded identically to the form available from the department. The guarantor shall comply with all provisions of subdivision 1 of this subsection for self-insurance and also comply with all requirements in the Guaranty Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department.

D. To obtain exemption from the cash deposit requirements:

1. The operator shall have and maintain an agent for service of process in the Commonwealth;

2. Any insurer, guarantor, or surety shall have and maintain an agent for service of process in the Commonwealth;

3. Any insurer must be authorized by the Commonwealth of Virginia to engage in the insurance business; and

4. Any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation by the operator of Article 11 ~~(§ 62.1-33.34:14 et seq.)~~ (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia up to, but not exceeding, the amount insured, guaranteed or otherwise pledged.

5. All forms of evidence of financial responsibility shall be accompanied by an endorsement that certifies that the insurance policy, evidence of self-insurance, surety or guaranty provides liability coverage for the tank vessels in the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

6. Subdivisions 2, 3 and 4 of this subsection do not apply to operators providing evidence of financial responsibility in accordance with subdivision C 1 of this section.

E. Any operator whose financial responsibility is accepted under this chapter shall notify the board at least 30 days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

F. The board's approval of evidence of financial responsibility shall expire:

1. One year from the date that the board exempts an operator from the cash deposit requirement based on acceptance of evidence of self-insurance;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

G. All nonexempt tank vessel operators shall file with the board the Application for Approval of Evidence of Tank Vessel Financial Responsibility which identifies the tank vessel operator and agent for service of process by name and address, provides identifying information on the tank vessel or vessels and certifies to the board that the information is true and accurate for approval of the evidence of financial responsibility. This form is available. This form shall be submitted with the required evidence of financial responsibility (cash deposit, proof of insurance, self-insurance, guaranty or surety), and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form. If the operator is a corporation, the application form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the application form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the application form must be signed by a general partner or the sole proprietor.

H. Application for renewal of approval of tank vessel financial responsibility shall be filed with the board 30 days prior to the date of expiration.

I. All applications and written communications concerning changes, submissions and updates required by this chapter, with the exception of applications and submissions accompanied by fees as addressed in subsection K of this section, shall be addressed as follows:

Mailing Address:

Virginia Department of Environmental Quality

Office of Spill Response and Remediation

P.O. Box 1105

Richmond, VA 23218

Location Address:

Virginia Department of Environmental Quality

Office of Spill Response and Remediation

629 East Main Street

Richmond, VA 23219

All applications and submissions accompanied by fees as addressed in subsection K of this section shall be sent to the address listed in subdivision K 2.

J. The board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility.

K. An application for approval of the demonstration of financial responsibility will be accepted only when the fees established by this section have been paid.

1. Fees shall only be paid upon initial submittal of the demonstration of financial responsibility by an operator to

the board. Renewals or changes are not subject to the administrative fee.

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to Treasurer of Virginia. All fees and accompanying applications and submissions shall be sent to:

Mailing Address:

Virginia Department of Environmental Quality

Office of Financial Management

P.O. Box 1105

Richmond, VA 23218

Location Address:

Virginia Department of Environmental Quality

Office of Financial Management

629 East Main Street

Richmond, VA 23219

3. Application fees for approval of evidence of financial responsibility for tank vessels are as follows:

a. Applicants shall pay an application fee of $120.

b. Applicants shall pay a fee of $30 for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility.

4. Application fees are refundable upon receipt of a written notice of withdrawal; of the proffer of financial responsibility and a request for refund received by the department no later than 30 days after submittal and prior to approval.

5. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

9VAC25-101-70. ~~Evaluation of the chapter.~~ (Repealed.)

~~A. The department will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.~~

~~B. 1. Within three years after the effective date of this chapter, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of the current state and federal statutory and regulatory requirements, including identification and justification of the requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understood by affected entities.~~

~~2. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

VA.R. Doc. No. R15-3922; Filed May 27, 2015, 11:25 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-650. Closure Plans and Demonstration of Financial Capability (amending 9VAC25-650-10, 9VAC25-650-30, 9VAC25-650-50, 9VAC25-650-60, 9VAC25-650-100, 9VAC25-650-110, 9VAC25-650-120, 9VAC25-650-170; adding 9VAC25-650-124, 9VAC25-650-127; repealing 9VAC25-650-190).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.18:3 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.virginia.gov.

Basis: The State Water Control Board is directed by § 62.1-44.18:3 of the Code of Virginia to adopt regulations that require privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day to develop closure plans and provide financial assurance for closure of the sewerage systems or sewage treatment works. The State Water Control Board previously adopted this regulation in 2001.

Purpose: The purpose of the regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are capable of continuing to treat sewage and are capable of properly closing facilities. These smaller sewage systems and sewage treatment works are private companies providing a service to paying customers. The financial stability of the business to continue to properly operate a sewage system or sewage treatment works directly relates to the business's ability to properly treat sewage before it is discharged into state waters.

Virginia law requires plans to be developed by the owner of these smaller sewage systems or sewage treatment works to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations and to demonstrate financial capability to implement the plan. Virginia law specifies that a trust fund, bond, corporate guarantee, or other mechanism deemed appropriate by the board may be used to demonstrate financial assurance.

When the regulation was originally adopted, smaller sewage systems or sewage treatment works were owned by smaller entities that had limited financial resources. For that reason, the corporate guarantee specified in the statute was not included in the regulation as a financial assurance option. Over the years, some of the smaller sewage systems or sewage treatment works have been purchased by or have become operated by larger companies that have additional financial resources available to them. The larger companies have more financial resources and would potentially be able to demonstrate financial assurance through the use of a corporate financial test and corporate guarantee. Many other agency regulations allow the use of the corporate financial test and corporate guarantee to demonstrate financial assurance and the regulation is being amended to include this option for those entities that qualify to use the financial test and corporate guarantee.

The regulation is being updated to be consistent with state law and other water regulations. Definitions in the regulation are being amended to be consistent with terms defined in other water regulations. Citations within the regulation are also being updated with current citations.

Rationale for Using Fast-Track Process: This regulatory amendment is anticipated to be noncontroversial since it adds additional financial assurance mechanisms to the regulation, thereby providing the regulated community with additional options for meeting the requirement to provide financial assurance. The corporate financial test and the corporate guarantee are financial assurance mechanisms that are used in other agency regulations to demonstrate financial assurance; therefore, it is believed that the addition of these additional mechanisms will be noncontroversial.

The other changes being made to the regulation will make the regulation consistent with other regulations, either through making the defined terms consistent with other water regulations or by updating outdated citations with current regulatory citations.

Substance: The regulation is being amended to include the corporate financial test and the corporate guarantee. The amendment includes the addition of new sections with details concerning the requirements of the corporate financial test and the corporate guarantee. Definitions pertaining to the corporate financial test and the corporate guarantee have also been added to the regulation.

Issues: The primary advantage to the regulated community is the additional methods the regulated community will have to choose from concerning how they demonstrate financial assurance. There is no disadvantage to the regulated community since the financial mechanisms that are currently in the regulation to demonstrate financial assurance will continue to be available to demonstrate financial assurance.

The Commonwealth and the agency will not receive any advantages from the regulatory changes. The agency will be required to periodically monitor the financial stability of the operators using the corporate financial test and the corporate guarantee. The agency is already monitoring the financial stability of companies using the corporate guarantee and corporate guarantee when this mechanism is used in other regulatory programs.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to: 1) clarify that the corporate financial test and the corporate guarantee may be used as mechanisms to demonstrate financial assurance, 2) add detail on requirements for the corporate financial test and the corporate guarantee, and 3) add definitions and clarifying language that do not substantially change requirements.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The purpose of this regulation is to ensure that owners or operators of privately owned sewerage systems and sewerage treatment works that discharge between 1,000 gallons and 40,000 gallons per day are capable of continuing to treat sewage and are capable of properly closing facilities. These smaller sewage systems and sewage treatment works are private companies providing a service to paying customers. The financial stability of the business to continue to properly operate a sewage system or sewage treatment works directly relates to the businesss ability to properly treat sewage before it is discharged into state waters.

Code of Virginia § 62.1-44.18:3 requires plans to be developed by the owner of these smaller sewage systems or sewage treatment works to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations and to demonstrate their financial capability to implement the plan. The statute specifies that a trust fund, bond, corporate guarantee, or other mechanism deemed appropriate by the board may be used to demonstrate financial assurance.

When the regulation was originally adopted, smaller sewage systems or sewage treatment works were owned by smaller entities that had limited financial resources. For that reason, the corporate guarantee specified in the statute was not included in the regulation as a financial assurance option. Over the years, some of the smaller sewage systems or sewage treatment works have been purchased by or have become operated by larger companies that have additional financial resources available to them. The larger companies have more financial resources and would potentially be able to demonstrate financial assurance through the use of a corporate financial test or corporate guarantee. For some firms this may be a lower cost manner of demonstrating financial assurance.

Clarifying in this regulation that the use of a corporate financial test or a corporate guarantee may be used to

demonstrate financial assurance may result in some firms newly choosing one of these methods, particularly if it is less costly. This clarification introduces no new cost. Thus the proposed amendments produce a net benefit.

Businesses and Entities Affected. This regulation affects privately owned sewerage systems and sewerage treatment works that discharge more than 1,000 gallons per day and less than 40,000 gallons per day. The Department of Environmental Quality estimates that there are 40 such entities in the Commonwealth. Due to the small capacity of the sewage systems and sewage treatment works, it is likely that most businesses regulated by this regulation are small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments will not significantly affect employment.

Effects on the Use and Value of Private Property. Clarifying that the use of a corporate financial test or a corporate guarantee may be used to demonstrate financial assurance may result in some firms newly choosing one of these methods. This may result in cost savings and consequently a moderate increase in value for some privately owned sewerage systems and sewerage treatment works.

Small Businesses: Costs and Other Effects. Clarifying that the use of a corporate financial test or a corporate guarantee may be used to demonstrate financial assurance may result in some small firms newly choosing one of these methods. This may result in cost savings.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not create an adverse impact for small businesses.

Real Estate Development Costs. The proposed amendments will not significantly affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

The amendments include (i) adding the corporate financial test and the corporate guarantee as mechanisms to demonstrate financial assurance, (ii) updating regulation text for consistency with state law, and (iii) updating definitions and citations.

Part I
Definitions

9VAC25-650-10. Definitions.

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

"Active life" means the length of time a facility discharges to state waters or is subject to regulation under the Virginia ~~Pollution~~ Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Anniversary date" means the date of issuance of a financial mechanism.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Board" means the State Water Control Board.

"Ceases operations" means to cease conducting the normal operation of a facility under circumstances in which it is reasonable to expect that such operation will not be resumed

by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with board regulations. Ceases operations shall include, but not be limited to, the following:

1. Bankruptcy or insolvency of the owner or operator or suspension or revocation of a charter or license to operate the facility or to furnish sewer services;

2. Failure to operate and maintain a facility in accordance with the Operations and Maintenance Manual for the facility, such that a substantial or imminent threat to public health or the environment is created;

3. Failure to comply with the requirements of the VPDES permit for the facility, such that a substantial or imminent threat to public health or the environment is created;

4. Notification of termination of service by a utility providing electricity or other resource essential to the normal operation of the facility.

"Closure plan" means a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if a facility ceases operations.

"Current annual inflation factor" means the annual inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business.

"Current closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of this chapter.

"Current dollars" means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

"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, and Public Law 97-117, ~~33 USC § 1251 et seq.~~ or any subsequent revisions thereto.

"Department" means the Virginia Department of Environmental Quality.

"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.

"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.

"Facility closure plan" means a facility closure plan prepared in accordance with ~~9VAC5-585-140~~ 9VAC25-790-120 E 3.

"Local government" means a municipality, county, city, town, authority, commission, school board, political subdivision of a state, or other special purpose local government which provides essential services.

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

"Parent corporation" means a corporation that directly owns at least 50% of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter. For the purposes of this chapter, permit includes coverage issued under a VPDES general permit. Permit does not include any permit which has not yet been the subject of final ~~board~~ agency action, such as a draft permit or 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, defined and discrete conveyance, including, but not limited to, 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 agricultural or agricultural ~~storm water~~ 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 which 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, and if the board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"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 for other reasonable uses; provided that: (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or a deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Private residence" means any building, buildings, or part of a building owned by a private entity which serves as a permanent residence where sewage is generated. Private residences include, but are not limited to, single family homes, town houses, duplexes, condominiums, mobile homes, and apartments. Private residences do not include hotels, motels, seasonal camps, and industrial facilities that do not also serve as residences.

"Privately owned sewerage system" means any device or system that is:

1. Used in the treatment (including recycling and reclamation) of sewage. This definition includes sewers, pipes, pump stations or other conveyances only if they convey wastewater to a privately owned sewerage system; and

2. Not owned by the United States, a state, or a local government.

"Publicly owned treatment works ~~(POTW)~~" or "POTW" means ~~any device or system used in the treatment (including recycling and reclamation) of sewage~~ 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, or other conveyances only if they convey wastewater to a POTW ~~providing treatment~~ 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.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments, or other places together with such industrial wastes, underground, surface, storm, or other water, as may be present.

"Special order" means an order of the board issued under the provisions of § 62.1-44.15:1.1 of the Code of Virginia, which require that an owner file with the board a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is likely to occur if the facility ceases operations.

"Signature" means the name of a person written with his own hand.

"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.

"Substantial business relationship" means the extent of a business relationship necessary under applicable Virginia law to make a guarantee contract incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent and ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the director.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

"Treatment works" means any devices and systems used ~~in~~ for the storage, treatment, recycling, or reclamation of sewage or ~~combinations of sewage and industrial wastes, including pumping, power, and other equipment, and their appurtenances, and any works, including land that will be an integral part of the treatment process, or is used for an integral part of the treatment process, or is used for ultimate disposal of residues resulting from such treatment.~~ 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.

"Virginia ~~Pollution~~ Pollutant Discharge Elimination System (VPDES) Permit" means a document issued by the board pursuant to 9VAC25-31~~-10 et seq.~~, 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.

9VAC25-650-30. Applicability.

A. This regulation applies to all persons who own or operate permitted or unpermitted privately owned sewerage systems subject to the Virginia ~~Pollution~~ Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) that treat sewage generated by private residences and discharge more than 1,000 gallons per day and less than 40,000 gallons per day to state waters.

B. Owners or operators of privately owned sewerage systems must demonstrate annually financial assurance in accordance with the requirements of this chapter.

Part III
Closure Plans and Financial Assurance Criteria

9VAC25-650-50. General purpose and scope.

A. Any owner or operator of a privately owned sewerage system subject to this regulation shall file with the board a plan to abate, control, prevent, remove, or contain any substantial imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall be referred to as a closure plan. The closure plan shall include a detailed written estimate of the cost to implement the plan. The owner or operator shall file a closure plan and associated cost estimate for the facility with the board concurrently with the owner's or operator's first VPDES permit application for issuance or reissuance for the facility ~~submitted subsequent to December 5, 2001~~. Closure plans and cost estimates filed with the board shall be reviewed by the owner or operator and updated as necessary at the end of each VPDES permit term. Revised and updated closure plans shall be filed with the board concurrently with each subsequent VPDES permit application.

B. Closure plans and cost estimates shall be subject to review by the board. The owner or operator shall be notified in writing within 60 days of receipt of the closure plan and cost estimate of the board's decision to approve or disapprove the proposed closure plan and cost estimate. If the board disapproves the closure plan or cost estimate, the board shall notify the owner or operator as to what measures, if any, the owner or operator may take to secure approval. If the owner or operator submits a closure plan that is not approvable by the board, the board may, at its sole discretion, promulgate a closure plan and cost estimate for the facility, subject to appeal by the owner or operator only as to content under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Closure plans shall be implemented when the board has determined, at its sole discretion, that the facility has ceased operations. The owner or operator of a privately owned facility shall notify the board within 24 hours of the facility ceasing operations as defined in this chapter.

D. In order to assure that the costs associated with protecting public health and the environment are to be recovered from the owner or operator in the event that a facility subject to this regulation ceases operation, the owner or operator of such facility shall submit to the board one or a combination of the financial assurance mechanisms described in this chapter. Financial assurance mechanisms shall be in amounts calculated as the inflation-adjusted cost estimate using the procedures set forth in this chapter.

E. In the case of new facilities or increased discharges from existing facilities, the selected financial assurance mechanism or mechanisms shall be filed with the board no less than 90 days prior to the discharge or increased discharge to state waters. ~~In the case of existing facilities with a valid VPDES permit on December 5, 2001, the financial assurance mechanism or mechanisms shall be filed with the board within 30 days of the date of board approval of the closure plan and cost estimate.~~

F. The board may disapprove the proposed evidence of financial assurance if the mechanism or mechanisms submitted do not adequately assure that funds will be available for implementation of the closure plan. The owner or operator shall be notified in writing of the board's decision to approve or disapprove the proposed mechanism. If the board disapproves the financial assurance mechanism, the board shall notify the owner or operator as to what measures, if any, the owner or operator may take to secure approval.

G. Closure plans, cost estimates, and financial assurance mechanisms shall remain in place for the active life of the facility and for the time required to complete the activities specified in the closure plan.

9VAC25-650-60. Closure plans.

A. The owner or operator of a privately owned sewerage system subject to this chapter shall provide a closure plan which abates, controls, prevents, removes, or contains any substantial threat to public health or the environment that is reasonably likely to occur if the facility ceases operations.

B. Closure plans shall be submitted to the board by the owner or operator concurrently with its application for a VPDES permit for the facility or as otherwise required by special order. Existing closure plans filed with the board shall be reviewed by the owner or operator, modified as necessary, and resubmitted to the board concurrently with an owner's or operator's application for a reissued VPDES permit. The submittal shall include a written summary of the results of the review and any modifications to the closure plan.

C. Closure plans shall consist of one or more of the following:

1. The cessation of the discharge of pollutants to state waters, followed by closure of the facility in accordance with the facility closure plan prepared in accordance with ~~12VAC5-585-140~~ 9VAC25-790-120 E 3 and approved by the ~~Virginia Department of Health~~ department. ~~Where no Virginia Department of Health approved facility closure plan exists, one shall be prepared in accordance with the requirements of 12VAC5-585-140 and submitted as part of the closure plan.~~

2. Connection to an alternative treatment works, such as a POTW, including rerouting of all influent flow, followed by closure of the VPDES permitted facility in accordance with the facility closure plan prepared in accordance with ~~12VAC5-585-140~~ 9VAC25-790-120 E 3 and approved by the ~~Virginia Department of Health~~ department. ~~Where no Virginia Department of Health approved facility closure~~

~~plan exists, one shall be prepared in accordance with the requirements of 12VAC5-585-140 and submitted as part of the closure plan.~~

3. Transfer of the facility to a local government, provided that written agreement of the receiving local government to obtain a VPDES permit and operate and maintain the facility in accordance with the VPDES permit and all other applicable laws and regulations, is obtained and included as part of the closure plan.

4. Contract operation of the facility for a period of two years after initial implementation of the closure plan, regardless of the date of initial implementation. Contract operation shall be by a named private company or other entity licensed to operate wastewater treatment facilities in the Commonwealth of Virginia and licensed to operate the specific facility to which the closure plan applies. A closure plan consisting of or including contract operation shall include a written, signed contract executed by the contract operator, contingent only upon approval of the closure plan by the board. The contract shall specify that the contract operator shall operate the facility for the term of the contract in accordance with the terms and conditions of the owner's or operator's VPDES permit for the facility. The contract shall also specify that the contract operator shall assume, without exception, all responsibilities and liabilities associated with the facility's discharge to state waters and with the owner's or operator's VPDES permit in the event the closure plan is implemented. The owner or operator of the facility and the owner of the private company or entity contracted to operate the facility under the closure plan shall not be the same person.

5. An alternative plan which will abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if the facility ceases operations.

D. Closure plans shall designate and authorize a named third party who, upon notification by the board, will implement the closure plan. The closure plan shall include written agreement by the named third party, bearing that person's signature, to implement the closure plan in accordance with the requirements of the closure plan for the duration of the VPDES permit term. Where the closure plan includes contract operation of the facility, the named third party may be the contract operator.

E. Closure plans may not consist of the transfer or sale of the facility to another private entity which also would be subject to this regulation.

9VAC25-650-100. Surety ~~Bond~~ bond.

A. An owner or operator may satisfy the requirements of this chapter by obtaining a surety bond that conforms to the requirements of this section and by submitting an originally signed duplicate of the bond to the board. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be on surety company letterhead and worded as follows, except that instructions in parentheses shall be replaced with the relevant information and the parentheses deleted.

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

Effective date: _____

Principal: (legal name and address of owner or operator) _____

Type of organization: (insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization) _____

State of incorporation (if applicable): _____

Surety: (name(s) and business address) _____

Scope of Coverage:

(List the name of and the address where the private sewage treatment facility assured by this mechanism is located. List the coverage guaranteed by the bond: operation, maintenance, and closure of the privately owned sewage treatment facility)

Penal sum of bond: $ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, ("DEQ") in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required under § 62.1-44.18:3 of the State Water Control Law of the Code of Virginia to provide financial assurance to implement a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations (closure plan);

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully implement the closure plan in accordance with the Director of the DEQ's instructions to implement the plan for the facility described above, or if the Principal shall provide alternate financial assurance, acceptable to DEQ and obtain the Director's written approval

of such assurance, within 60 days after the date the notice of cancellation is received by the Director of the DEQ from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the DEQ that the owner or operator has failed to fulfill the conditions above or that the DEQ has determined that the facility has ceased operations, the Surety(ies) shall either implement the closure plan or forfeit the full amount of the penal sum as directed by the Director of the DEQ under 9VAC25-650-140.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director of the DEQ, Commonwealth of Virginia, 629 East Main Street, Richmond, Virginia 23219, provided, however, that cancellation shall not occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and Director of the DEQ as shown on the signed return receipt; or (2) while a compliance procedure is pending.

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 9VAC25-650-100 B as such regulations were constituted on the date this bond was executed.

PRINCIPAL

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)

CORPORATE SURETY(IES)

(Name and address)

State of Incorporation:

Liability limit: $ _____

(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $ _____

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

D. The bond shall guarantee that the owner or operator or any other authorized person will:

1. Implement the closure plan in accordance with the approved closure plan and other requirements in any permit for the facility;

2. Implement the closure plan following an order to do so issued by the board or by a court.

E. The surety bond shall guarantee that the owner or operator shall provide alternate financial assurance as specified in this ~~article~~ part within 60 days after receipt by the board of a notice of cancellation of the bond from the surety.

F. If the approved cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this ~~article~~ part to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the board. Notice of an increase or decrease in the penal sum shall be sent to the board by certified mail within 60 days after the change.

G. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the board. Cancellation cannot occur, however:

1. During the 120 days beginning on the date of receipt of the notice of cancellation by the board as shown on the signed return receipt; or

2. While an enforcement procedure is pending.

H. The surety shall provide written notification to the board by certified mail no less than 120 days prior to the expiration date of the bond, that the bond will expire and the date the bond will expire.

I. In regard to implementation of a closure plan either by the owner or operator, by an authorized third party, or by the surety, proper implementation of a closure plan shall be deemed to have occurred when the board determines that the closure plan has been completed. Such implementation shall be deemed to have been completed when the provisions of the facility's approved closure plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the closure plan have been complied with.

9VAC25-650-110. Letter of ~~Credit~~ credit.

A. An owner or operator may satisfy the requirements of this chapter by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section and by submitting an originally signed duplicate of the letter of credit

to the board. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be on financial institution letterhead and worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

(Name and address of issuing institution)

Beneficiary:

Director

Department of Environmental Quality (DEQ)

P.O.Box 1105

Richmond, Virginia 23218

629 E. Main Street

Richmond, Virginia ~~23218~~ 23219

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No._____ in your favor, at the request and for the account of (owner or operator name) of (address) up to the aggregate amount of (in words) U.S. dollars, ($(insert dollar amount)), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No._____ and

(2) your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1-44.18:3 of the Code of Virginia."

This letter of credit may be drawn on to implement the closure plan for the facility identified below in the amount of (in words) ($(insert dollar amount)). (Name of facility and address of the facility assured by this mechanism, and number of hookups served by the system.)

This letter of credit is effective as of (date) and shall expire on (date), but such expiration date shall be automatically extended for a period of (at least the length of the original term) on (expiration date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify the Director of the DEQ and the owner or operator by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that the owner or operator is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by the Director of the DEQ and the owner or operator, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall submit the amount of the draft directly to DEQ in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording required in 9VAC25-650-110 B as such regulations were constituted on the date shown immediately below.

Attest:

(Signature(s) and title(s) of official(s) of issuing institution)

(Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

C. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for implementation of the closure plan. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the expiration date, notify both the owner or operator and the board by certified mail of that decision. The 120-day period will begin on the date of receipt by the board as shown on the signed return receipt. Expiration cannot occur, however, while an enforcement procedure is pending. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance to be in effect prior to the expiration date of the letter of credit.

D. Whenever the approved cost estimate increases to an amount greater than the amount of credit, the owner or operator shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this ~~article~~ part to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the board. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the board by certified mail within 60 days of the change.

E. Following a determination by the board that the owner or operator has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the owner or operator or has ceased operations at the facility or has failed to implement the closure plan in accordance with the approved plan or other permit or special order requirements, the board will draw on the letter of credit.

F. The owner or operator may cancel the letter of credit only if alternate financial assurance acceptable to the board is substituted as specified in this ~~article~~ part or if the owner or operator is released by the board from the requirements of this chapter.

G. The board shall return the original letter of credit to the issuing institution for termination when:

1. The owner or operator substitutes acceptable alternate financial assurance for implementation of the closure plan as specified in this ~~article~~ part; or

2. The board notifies the owner or operator that he is no longer required by this ~~article~~ part to maintain financial assurance for implementation of the closure plan for the facility.

9VAC25-650-120. Certificate of ~~Deposit~~ deposit.

A. An owner or operator may satisfy the requirements of this chapter, wholly or in part, by assigning all rights, title and interest of a certificate of deposit to the board, conditioned so that the owner or operator shall comply with the approved facility closure plan filed for the facility. The issuing institution shall be an entity that has the authority to issue certificates of deposit in the Commonwealth of Virginia and whose operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia). The owner or operator must submit the originally signed assignment and the originally signed certificate of deposit, if applicable, to the board.

B. The assignment shall be on financial institution letterhead and worded as follows, except that instructions in parentheses shall be replaced with the relevant information and the parentheses deleted.

ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT

City,_____
20_____

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality, Commonwealth of Virginia and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

__If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No.

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of _____ Dollars ($_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

Additional Security. This assignment shall secure the payment of any financial assurance obligations of the (name of owner/operator) to the Virginia Department of Environmental Quality for closure activities at the (facility name and permit number) located (physical address).

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner/operator) to the Virginia Department of Environmental Quality for closure activities at the (facility name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund closure at the (facility name) or in the event of (name of owner or operator)'s failure to comply with the regulation entitled Closure Plans and Demonstration of Financial Capability, 9VAC25-650-10 et seq. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. The undersigned agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

SEAL

(Owner)

(Print name)

SEAL

(Owner)

(Print name)

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above Assignment has been properly recorded by placing a hold in the amount of $_____for the benefit of the Virginia Department of Environmental Quality.

__If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

I certify that the wording of this Assignment is identical to the wording required in 9VAC25-650-120 B as such regulations were constituted on the date shown immediately below.

(Signature)

(Date)

(Print name)

(Title)

C. The amount of the certificate of deposit shall be at least equal to the current closure cost estimate for the facility for which the permit application has been filed or any part thereof not covered by other financial assurance mechanisms. The owner or operator shall maintain the certificate of deposit and assignment until all activities required by the approved facility closure plan have been completed.

D. The owner or operator shall be entitled to demand, receive and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit plus any other mechanisms used continue to at least equal the amount of the current closure cost estimate.

E. Following a determination by the board that the owner or operator has ceased operations at the facility or has failed to complete closure activities in accordance with the approved facility closure plan or other permit or special order, the board shall cash the certificate of deposit.

F. Whenever the approved closure cost estimate increases to an amount greater than the amount of the certificate of deposit, the owner or operator shall, within 60 days of the increase, cause the amount of the certificate of deposit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this chapter to cover the increase. Whenever the cost estimate decreases, the owner or operator may reduce the amount of the certificate of deposit to the new estimate following written approval by the board. The owner or operator must submit a certificate of deposit and assignment reflecting the new cost estimate within 60 days of the change in the cost estimate.

G. The board shall return the original assignment and certificate of deposit, if applicable, to the issuing institution for termination when:

1. The owner or operator substitutes acceptable alternate financial assurance for implementation of the closure plan as specified in this chapter; or

2. The board notifies the owner or operator that ~~he~~ the owner or operator is no longer required by this ~~Chapter~~ chapter to maintain financial assurance for implementation of the closure plan for the facility.

9VAC25-650-124. Corporate financial test.

A. An owner or operator may satisfy the requirements for financial assurance by demonstrating that he passes a financial test as specified in this section. To pass this test the owner or operator shall meet the following criteria:

1. Financial component.

a. The owner or operator shall satisfy one of the following three conditions:

(1) Supply documentation demonstrating that the owner or operator has a current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(2) A ratio of less than 1.5 comparing total liabilities to net worth; or

(3) A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion, and amortization, minus $10 million, to total liabilities.

b. The tangible net worth of the owner or operator shall be greater than the sum of the current closure plan cost estimates and any other environmental obligations covered by a financial test plus $10 million.

c. The owner or operator shall have assets located in the United States amounting to at least the sum of current closure plan cost estimates and any other environmental obligations covered by a financial test as described in subdivision 3 of this subsection.

2. Reporting requirements.

a. To demonstrate that the owner or operator meets the financial component, the owner or operator shall submit the following items to the director and place copies of the items in the facility's operating record:

(1) An original letter signed by the owner's or operator's chief financial officer or managing member and worded as specified in 9VAC25-650-124 B.

(2) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year except as provided in subdivision (a) of this subdivision A 2 a (2):

(a) To be eligible to use the financial test, the owner's or operator's financial statements referenced in subdivision 2 a (2) of this subsection shall receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance. The director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the director deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the director does not allow use of the test, the owner or operator shall provide alternate financial assurance as specified in this part.

(b) (Reserved.)

(3) A copy of the owner's or operator's audited financial statements for the latest completed fiscal year.

(4) If the chief financial officer's or managing member's letter providing evidence of financial assurance includes financial data that are different from data in the audited financial statements referred to in subdivision 2 a (2) of this subsection or any other audited financial statement or data filed with the Securities Exchange Commission (SEC), a special report from the owner's or operator's independent certified public accountant to the owner or operator is required stating that:

(a) He has compared the data in the chief financial officer's or managing member's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(b) In connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's or managing member's letter should be adjusted.

(5) A certification from the corporation's chief financial officer or managing member stating the method for funding closure costs and the amount currently designated for closure costs in the corporation's financial statements worded as specified in 9VAC25-650-124 B.

b. If the owner or operator changes the financial assurance mechanism to corporate financial test from any other mechanism, the owner or operator shall submit the items specified in subdivision 2 a of this subsection at least 60 days before the date that the former assurance expires.

c. After the initial submission of items specified in subdivision 2 a of this subsection, the owner or operator shall update the information and submit updated information to the director within 90 days following the close of the owner's or operator's fiscal year. This information must consist of all five items specified in subdivision 2 a of this subsection.

d. The owner or operator is no longer required to submit the items specified in subdivision 2 a of this subsection when:

(1) The owner or operator substitutes alternate financial assurance as specified in this part; or

(2) The owner or operator is released from the requirements of this part by the director.

e. If the owner or operator no longer meets the requirements of subdivision 1 of this subsection, the owner or operator shall, within 120 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this part, notify the director that the owner or operator no longer meets the criteria of the financial test and submit the alternate assurance documentation.

f. The director may require reports of financial condition at any time from the owner or operator in addition to those specified in subdivision 2 a of this subsection. If the director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subdivision 1 of this subsection, the owner or operator shall provide alternate financial assurance as specified in this part within 30 days after notification of such a finding.

g. The director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see subdivision 2 a (2) (a) of this subsection). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this part within 30 days after notification of the disallowance.

3. Calculation of costs to be assured. When calculating the current cost estimates for closure, and any other environmental obligations assured by a financial test referred to in subdivision 1 of this subsection, the owner or operator must include cost estimates required for closure plans for privately owned sewerage systems under this part, as well as cost estimates required for the following environmental obligations, if it assures them through financial test obligations associated with underground injection control (UIC) facilities under 40 CFR 144.62; petroleum underground storage tank facilities under 9VAC25-590-10 et seq.; above ground storage tank facilities under 9VAC25-640-10 et seq.; polychlorinated biphenyls (PCB) storage facilities under 40 CFR Part 761; hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265; and municipal solid waste management facilities under 9VAC20-70.

B. The wording of the letter from the chief financial officer or managing member shall be as follows, except that instructions in parentheses shall be replaced with the relevant information and the parentheses deleted.

Director
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

Dear (Sir, Madam):

I am the chief financial officer or managing member of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 9VAC25-650-124 of the Closure Plans and Demonstration of Financial Capability Regulation (9VAC25-650) ("Regulation").

(Fill out the following four paragraphs regarding privately owned sewerage systems (9VAC25-650), solid waste, regulated medical waste, yard waste composting, hazardous waste, underground injection (regulated under the federal program in 40 CFR Part 144, or its equivalent in other states), petroleum underground storage (9VAC25-590), above ground storage facilities (9VAC25-640) and PCB storage (regulated under 40 CFR Part 761) facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its name, address, permit number, if

any, and current closure, post-closure care, corrective action or any other environmental obligation cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, corrective action or other environmental obligation.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the corporate test specified in 9VAC25-650-124 or its equivalent in other applicable regulations. The current closure plan cost estimates covered by the test are shown for each facility:

2. This firm guarantees, through the corporate guarantee specified in 9VAC25-650-124, the financial assurance for the following facilities owned or operated by subsidiaries of this firm. The current closure plan cost estimates so guaranteed are shown for each facility:

3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a financial test. The current closure plan cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following privately owned sewerage systems for which financial assurance is not demonstrated through the financial test or any other financial assurance mechanism. The current closure plan cost estimates for the facilities which are not covered by such financial assurance are shown for each facility:

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

1) Sum of current closure, post-closure care, corrective action, or other environmental obligations cost estimates (total of all cost estimates shown in the four paragraphs above.)	$_____
2) Tangible net worth*	$_____
3) Total assets located in the United States*	$_____

	YES	NO
Line 2 exceeds line 1 by at least $10 million?	____	____
Line 3 exceeds line 1 by at least $10 million?	____	____

(Fill in Alternative I if the criteria of 9VAC25-650-124 A 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC25-650-124 A 1 a (2) are used. Fill in Alternative III if the criteria of 9VAC25-650-124 A 1 a (3) are used.)

ALTERNATIVE I

Current bond rating of this firm's senior unsubordinated debt and name of rating service	_____
Date of issuance of bond	_____
Date of maturity of bond	_____

ALTERNATIVE II

4) Total liabilities* (if any portion of the closure, post-closure care, corrective action, or other environmental obligations cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to line 5.)	$_____
5) Net worth*	$_____

	YES	NO
Is line 4 divided by line 5 less than 1.5?	____	____

ALTERNATIVE III

6) Total liabilities*	$_____
7) The sum of net income plus depreciation, depletion, and amortization minus $10 million*	$_____

	YES	NO
Is line 7 divided by line 6 less than 0.1?	____	____

I hereby certify that the wording of this letter is identical to the wording in 9VAC25-650-124 B of the Closure Plans and Demonstration of Financial Capability Regulation as such regulation is constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

C. Certification of funding.

CERTIFICATION OF FUNDING

I certify the following information details the current plan for funding closure at the privately owned sewerage systems listed below.

Facility permit # _____

Source for funding closure _____

Name of locality or corporation _____

Signature _____

Printed name _____

Title _____

Date _____

9VAC25-650-127. Corporate guarantee.

A. An owner or operator may meet the requirements of this part by obtaining a written guarantee, referred to in this section as "corporate guarantee." The guarantor shall be the direct or higher-tier parent corporation or direct or higher-tier parent company of the owner or operator, a firm whose parent corporation or parent company is also the parent corporation or parent company of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator.

B. Financial component. The guarantor shall meet the requirements for owners or operators in 9VAC25-650-124 and shall comply with the terms of the corporate guarantee.

C. Reporting requirements.

1. The wording of the corporate guarantee shall be identical to the wording specified in 9VAC25-650 127 G. The corporate guarantee shall accompany the items sent to the director as specified in 9VAC25-650-124 A 2. A copy of the guarantee and other items listed in of 9VAC25-650-124 A 2 shall be placed in the facility's operating record.

2. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

3. If the owner or operator changes the financial assurance mechanism to corporate guarantee from any other mechanism, the guarantor shall submit the required items 60 days before the former mechanism expires.

D. The terms of the corporate guarantee shall provide that:

1. If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other permit or order requirements whenever required to do so, the guarantor shall:

a. Perform, or pay a third party to perform, closure as required (performance guarantee); or

b. Establish a fully funded trust fund as specified in 9VAC25-650-90 in the name of the owner or operator (payment guarantee).

2. The corporate guarantee will remain in force unless the guarantor sends a prior notice of cancellation by certified mail to the owner or operator and to the director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the director, as evidenced by the return receipts.

3. If a guarantee is canceled, the owner or operator must within 90 days following receipt of the cancellation notice by the owner or operator obtain alternate financial assurance and submit the required documentation to the director.

4. If the owner or operator fails to provide alternate financial assurance as specified in this part and to obtain the written approval of such alternate assurance from the director within 90 days after the receipt by both the owner or operator and the director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator within 120 days of issuing the cancellation notice.

E. If a corporate guarantor no longer meets the requirements of subdivision 1 of 9VAC25-650-124, the owner or operator must, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance and submit the required documentation to the director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, and submit the necessary documentation to the director.

F. The owner or operator is no longer required to submit the items specified in this section when:

1. The owner or operator substitutes alternate financial assurance; or

2. The owner or operator is released from the requirements by the director.

G. The wording of the corporate guarantee shall be as follows, except that instructions in parentheses shall be replaced with the relevant information and the parentheses deleted.

CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation or company organized under the laws of the state of (insert name of state), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and

address of common parent corporation or parent company) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in Part I of the Closure Plan and Demonstration of Financial Capability Regulation 9VAC25-650") to the Virginia Department of Environmental Quality ("Department"), obligee, on behalf of the (owner or operator) of (business address).

Recitals:

1. Guarantor meets or exceeds the financial test criteria in 9VAC25-650-124 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC25-650-127 of the Closure Plan and Demonstration of Financial Capability Regulation ("Regulation").

2. (Owner or operator) owns or operates the following sewage treatment plant(s) covered by this guarantee: (List for each facility: name, address, and permit number, if any.)

3. "Closure plans" as used below refer to the plans maintained as required by the Regulation.

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform closure of the above facility(ies) in accordance with the closure plan and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC25-650-90 in the name of (owner or operator) in the amount of the current closure plan cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that guarantor intends to provide alternate financial assurance as specified in 9VAC25-650, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that guarantor is disallowed from continuing as a guarantor of closure, guarantor shall establish alternate financial assurance as specified in 9VAC25-650 in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the Regulation or § 62.1-44.18:3 of the Code of Virginia.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of the Regulation for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier parent corporation or company or (b) a firm whose parent corporation or parent company is also the parent corporation or parent company of the owner or operator:) Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves alternate financial assurance coverage complying with the requirements of 9VAC25-650. (Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator:) Guarantor may terminate this guarantee 120 days following the receipt of notification of cancellation through certified mail by the director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in the Regulation and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the facility permit(s) or order.

I hereby certify that the wording of this guarantee is identical to the wording in 9VAC25-650-127 G of the Closure Plan and Demonstration of Financial Capability Regulation as such regulation was constituted on the date shown immediately below.

(Name of guarantor) _____

Effective date _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing)

Signature of witness or notary

9VAC25-650-170. Cancellation or renewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. Termination of a surety bond or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider ~~or~~ of financial assurance cancels or fails to renew for reasons other than incapacity of the provider as specified in 9VAC25-650-180, the owner or operator shall obtain alternate coverage as specified in this section and shall submit to the board the appropriate original forms listed in 9VAC25-650-90, 9VAC25-650-100, 9VAC25-650-110, ~~or~~ 9VAC25-650-120, 9VAC25-650-124, or 9VAC25-650-127 documenting the alternate coverage within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with this chapter.

9VAC25-650-190. ~~Incremental funding.~~ (Repealed.)

~~A. Incremental funding of the amount of financial assurance required may be allowed at the sole discretion of the board for existing facilities discharging in compliance with a current VPDES permit on December 5, 2001. Incremental funding of the amount of financial assurance required shall not be allowed for new or expanded discharges. Incremental funding of the amount of financial assurance shall not be allowed where a mechanism is already in place. Incremental funding of the amount of financial assurance required shall be considered only upon written request by the owner or operator. The board may allow incremental funding of closure cost estimates under the following conditions:~~

~~1. The board determines that closure plan implementation cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating; and~~

~~2. The facility has been in operation, discharging to state waters, for a period of at least five years prior to December 5, 2001, in accordance with a VPDES permit issued by the board; and~~

~~3. The board finds the facility is substantially in compliance with its VPDES permit conditions, and has been substantially in compliance with its VPDES permit conditions for a period of at least one permit term (five years) prior to the effective date of the owner's or operator's current VPDES permit; and~~

~~4. The board determines that the facility is not within five years of the expected facility life and there are no foreseeable factors that will shorten the estimate of facility life (to include facility upgrade or expansion); and~~

~~5. A schedule for funding the total amount of the approved cost estimate through the financial assurance mechanism within five years of the initial date required under this regulation is provided by the owner or operator and approved by the board. This period is hereafter referred to as the "pay in period."~~

~~B. Incremental funding shall be, at a minimum, in accordance with the approved schedule as follows:~~

~~1. Payments into the financial assurance mechanism shall be made annually during the pay in period by the owner or operator until the amount of financial assurance equals the total amount of the approved cost estimate, adjusted for inflation.~~

~~2. Annual payments into the financial assurance mechanism shall not be less than 20% of the approved inflation adjusted cost estimate, and shall continue until the amount of financial assurance equals the amount of the total approved cost estimate.~~

~~3. In no case shall the pay in period exceed five years.~~

~~4. Incremental funding cost estimates must be adjusted annually to reflect inflation and any change in the cost estimate.~~

~~C. The owner or operator shall submit a request for incremental funding of the amount of financial assurance, including documentation justifying the request in accordance with the requirements of this section, to the board in conjunction with the cost estimate submitted in accordance with the requirements of this chapter. The board shall review such requests by the owner or operator and inform the owner or operator of approval or disapproval of the request for incremental funding in conjunction with approval or disapproval of the cost estimate.~~

VA.R. Doc. No. R15-3993; Filed May 27, 2015, 11:27 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-60, 9VAC25-720-70, 9VAC25-720-110, 9VAC25-720-120).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: John Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4032, or email john.kennedy@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia authorizes the State Water Control Board to promulgate these amendments. The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. Subdivision 10 of § 62.1-44.15 of the Code of Virginia mandates the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth. In addition, subdivision 14 of § 62.1-44.15 of the Code of Virginia requires the board to establish requirements for the treatment of sewage, industrial wastes, and other wastes that are consistent with the purposes of State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia). The specific effluent limits needed to meet the water quality goals are discretionary. The correlation between the proposed regulatory action and the legal authority identified in this basis statement is that the amendments being considered are modifications of the current requirements for the treatment of wastewater that will contribute to the attainment of the Virginia water quality standards.

Purpose: The purpose of this rulemaking is to protect state waters by adopting regulations that are technically correct, necessary, and reasonable. Nutrients discharged from wastewater treatment plants contribute to the overall loading of nutrients to the Chesapeake Bay and its tributaries. These nutrients have been identified as pollutants causing adverse impacts on large portions of the Bay and its tidal rivers, which are included in the list of impaired waters required under § 303(d) of the Clean Water Act and § 62.1-44.19:5 of the Code of Virginia. Waters not meeting standards require development of a total maximum daily load (TMDL), also mandated under the same sections of federal and state law. The federal Environmental Protection Agency (EPA) adopted the Chesapeake Bay TMDL in December 2010, and Virginia is now following a watershed implementation plan to meet the requirements of that TMDL, in part by setting regulatory nutrient wasteload allocations (WLAs).

The amendments that are the subject of this rulemaking are part of the regulatory framework that governs the discharge of total nitrogen and total phosphorus for certain wastewater facilities within Virginia's portion of the Chesapeake Bay watershed. Resulting permit limitations are expressed principally as annual wasteload allocations, and also as technology-based annual average concentrations where appropriate and authorized. The proposed amendments are needed to make the Water Quality Management Program (WQMP) Regulation current by:

1. Deleting obsolete footnotes and, where appropriate, maintaining basin total WLAs by placing WLA balances resulting from self-enacting footnotes into an unallocated reserve,

2. Making revisions to nutrient WLAs resulting from appeals and settlements under the WQMP Regulation, adoption of EPA's Chesapeake Bay TMDL, and reissuance in 2012 of the Chesapeake Bay Nutrient Discharge Watershed General Permit (9VAC25-820),

3. Making technical corrections to facility names or permit numbers, and

4. Making expression of WLAs consistent for all facilities served by combined sewer systems.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, safeguard the clean waters from pollution, prevent and reduce pollution, and promote water conservation.

Rationale for Using Fast-track Process: In late 2005 the State Water Control Board adopted amendments to the WQMP Regulation that set annual total nitrogen (TN) and total phosphorus (TP) wasteload allocations (WLAs) for significant dischargers in the Chesapeake Bay watershed. Included in those amendments were numerous footnotes establishing a deadline for certain facilities to secure a certificate to operate for expanded design capacity, upon which their WLAs would be based if the deadline was met.

Due to passing of the deadline for "footnoted" facilities, as well as several appeals and settlements under the WQMP Regulation, adoption of EPA's Chesapeake Bay TMDL (December 2010), and reissuance in 2012 of the Chesapeake Bay Nutrient Discharge Watershed General Permit (9VAC25-820), there are several significant dischargers that must have their WLAs amended in this chapter. These revisions are expected to be noncontroversial due to the self-enacting nature of the footnotes, and the revisions are exempt actions (TMDL-related) under the Administrative Process Act necessary to meet the requirements of federal law. Another revision affecting the Alexandria Sanitation Authority facility (d.b.a. Alexandria Renew Enterprises) will make expression of their WLAs consistent with two other facilities that also have combined sewer systems, and whose WLAs were adopted without opposition in 2005.

Substance: The amendments:

1. Delete obsolete footnotes and, where appropriate, maintain basin total WLAs by placing WLA balances resulting from self-enacting footnotes into an unallocated reserve.

2. Revise TN and TP WLAs for several facilities as the result of:

a. Water Quality Management Program Regulation appeals and settlements.

b. EPA adoption of the Chesapeake Bay TMDL. These are exempt actions (TMDL-related) under § 2.2-4006 A

4 c of the Administrative Process Act (Necessary to meet the requirements of federal law).

3. Make expression of WLAs consistent for all facilities served by combined sewer systems.

4. Make technical housekeeping revisions (e.g., changes to facility name, consolidation of dischargers into a regional system, and revision of discharge permit numbers).

Issues: The public will benefit because these amendments will result in updating and correcting the Water Quality Management Planning Regulation, which is part of Virginia's plan to control the discharge of nitrogen and phosphorus from wastewater treatment plants in the Chesapeake Bay watershed. This, in turn, will aid in the restoration of water quality in the Chesapeake Bay and its tributary rivers and assist in meeting the water quality standards necessary for protection of the living resources that inhabit the Bay, as mandated by the EPA Chesapeake Bay Total Maximum Daily Load. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes the following amendments to the Water Quality Management Planning Regulation: 1) delete obsolete footnotes and, where appropriate, maintain basin total waste load allocations by placing waste load allocation (WLA) balances resulting from self-enacting footnotes into an unallocated reserve, 2) make revisions to nutrient WLAs resulting from appeals and settlements under this regulation, adoption of Environmental Protection Agencys Chesapeake Bay total maximum daily load, and reissuance in 2012 of the Chesapeake Bay Nutrient Discharge Watershed General Permit (9VAC25-820), 3) make technical corrections to facility names or permit numbers, and 4) make expression of WLAs consistent for all facilities served by combined sewer systems.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. All proposed changes do one or more of the following: eliminate obsolete language, clarify existing requirements, or conform requirements to existing federal requirements which must already be followed by the regulated entities. Thus the proposed amendments are beneficial in that they should provide greater clarity, but otherwise should not have a significant impact.

Businesses and Entities Affected. The proposed amendments affect 26 publicly and privately owned wastewater treatment facilities.

Localities Particularly Affected. The proposed amendments affect publicly and privately owned wastewater treatment facilities in the following localities: 1) Cities of Alexandria, Harrisonburg, and Winchester, 2) Counties of Caroline, Chesterfield, Culpeper, Fauquier, Frederick, Hanover, King George, King William, Loudoun, Mathews, New Kent, Prince William, Rockingham, Shenandoah, Spotsylvania, and York, and 3) Towns of Broadway, Cape Charles, Culpeper, Gordonsville, Leesburg, Mount Jackson, New Market, Onancock, Purcellville, and West Point.

Projected Impact on Employment. The proposed amendments will not likely have a large impact on employment.

Effects on the Use and Value of Private Property. The proposed amendments will not likely have a large impact on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments will not likely significantly affect small business costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments will not likely significantly affect real estate development costs.

Legal Mandate. 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 Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The amendments (i) delete obsolete footnotes and, where appropriate, maintain basin total wasteload allocations (WLA) by placing WLA balances resulting from self-enacting footnotes into an unallocated reserve; (ii) revise nutrient WLAs resulting from (a) appeals and settlements under this regulation, (b) adoption of Environmental Protection Agency's Chesapeake Bay total maximum daily load, and (c) reissuance in 2012 of the Chesapeake Bay Nutrient Discharge Watershed General Permit (9VAC25-820); (iii) make technical corrections to facility names or permit numbers; and (iv) make expression of WLAs consistent for all facilities served by combined sewer systems.

9VAC25-720-50. Potomac-Shenandoah River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-50 are not amended; therefore, the text of those subsections is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
B37R	Coors Brewing Company	VA0073245	54,820	4,112
B14R	Fishersville Regional STP	VA0025291	48,729	3,655
B32R	INVISTA - Waynesboro (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray STP	VA0062642	19,492	1,462
B35R	Massanutten PSA STP	VA0024732	18,273	1,371
B37R	Merck - Stonewall WWTP (Outfall 101)[~~9~~1]	VA0002178	43,835	4,384
B12R	Middle River Regional STP	VA0064793	82,839	6,213
B23R	North River WWTF[2]	VA0060640	253,391	19,004
B22R	VA Poultry Growers - Hinton	VA0002313	27,410	1,371
B38R	Pilgrims Pride - Alma	VA0001961	18,273	914
B31R	Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro STP	VA0025151	48,729	3,655
B23R	Weyers Cave STP	VA0022349	6,091	457
B58R	Berryville STP	VA0020532	8,528	640
B55R	Front Royal STP	VA0062812	48,729	3,655
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP[3]	VA0026441	8,528	640
~~B45R~~	~~New Market STP~~	~~VA0022853~~	~~6,091~~	~~457~~
B45R	~~North Fork (SIL)~~ Broadway Regional WWTF	VA0090263	~~23,390~~ 29,481	~~1,754~~ 2,211
B49R	Stoney Creek SD STP	VA0028380	7,309	548

~~B50R~~	~~North Fork Regional WWTP[1]~~	~~VA0090328~~	~~9,137~~	~~685~~
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF[4]	VA0022802	18,273	1,371
A09R	Broad Run WRF[5]	VA0091383	134,005	3,350
A08R	Leesburg WPCF	~~MD0066184~~ VA0092282	121,822	9,137
A06R	Round Hill Town WWTF	VA0026212	9,137	685
A25R	DSC - Section 1 WWTF[6]	VA0024724	42,029	2,522
A25R	DSC - Section 8 WWTF[7]	VA0024678	42,029	2,522
A25E	H L Mooney WWTF	VA0025101	219,280	13,157
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTF	VA0020460	11,573	868
B08R	Opequon WRF[~~10~~2]	VA0065552	121,851	11,512
B08R	Parkins Mills STP[~~8~~]	VA0075191	60,911	4,568
A13E	Alexandria ~~SA WWTF~~ Renew Enterprises[3]	VA0025160	493,381	29,603
A12E	Arlington County Water PCF	VA0025143	365,467	21,928
A16R	Noman M Cole Jr PCF	VA0025364	612,158	36,729
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	Quantico WWTF	VA0028363	20,101	1,206
A28R	Aquia WWTF	VA0060968	73,093	4,386
A31E	Colonial Beach STP	VA0026409	18,273	1,827
A30E	Dahlgren WWTF	VA0026514	9,137	914
A29E	King George County Service Authority - Fairview Beach	~~MD0056464~~ VA0092134	1,827	183
A30E	US NSWC-Dahlgren WWTF	VA0021067	6,578	658
A31R	Purkins Corner STP	VA0070106	1,096	110
	Unallocated Reserve WLA		9,137	685
	TOTALS:		5,156,169	246,635

Notes:

~~[1]Shenandoah Co. North Fork Regional WWTP: wasteload allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2010, the WLAs will be deleted and facility removed from Significant Discharger List.~~

~~[2]Harrisonburg-Rockingham Regional S.A. North River STP: wasteload allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.~~

~~[3]Mount Jackson STP: wasteload allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.~~

~~[4]Purcellville-Basham Simms STP: wasteload allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914lbs/yr, based on a design flow capacity of 1.0 MGD.~~

~~[5]Loudoun Co. S.A. Broad Run WRF: wasteload allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.~~

~~[6]Dale Service Corp. Section 1 WWTF: wasteload allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.~~

~~[7]Dale Service Corp. Section 8 WWTF: wasteload allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.~~

~~[8]Parkins Mill STP: wasteload allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.~~

[9~~1~~]Merck-Stonewall – (a) these wasteload allocations will be subject to further consideration, consistent with the Chesapeake Bay TMDL, as it may be amended, and possible reduction upon "full-scale" results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (b) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (b).

[10~~2~~]Opequon WRF: (a) the TN WLA is derived based on 3 mg/l of TN and 12.6 MGD; (b) the TN WLA includes an additional allocation for TN in the amount of 6,729 lbs/yr by means of a landfill leachate consolidation and treatment project; and (c) the TP WLA is derived based on 0.3 mg/l of TP and 12.6 MGD.

[3]Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 4.0 mg/l and TP concentration of 0.18 mg/l.

9VAC25-720-60. James River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-60 are not amended; therefore, the text of those subsections is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
I37R	Buena Vista STP	VA0020991	41,115	3,426
~~I09R~~	~~Clifton Forge STP~~	~~VA0022772~~	~~36,547~~	~~3,046~~
I09R	Covington STP	VA0025542	54,820	4,568
H02R	Georgia Pacific	VA0003026	122,489	49,658
I37R	Lees Carpets	VA0004677	30,456	12,182

I35R	Lexington-Rockbridge WQCF	VA0088161	54,820	4,568
I09R	Low Moor STP	VA0027979	9,137	761
I09R	Lower Jackson River STP	VA0090671	~~27,410~~ 63,957	~~2,284~~ 5,330
I04R	MeadWestvaco	VA0003646	394,400	159,892
H12R	Amherst STP	VA0031321	10,964	914
H05R	BWX Technologies Inc.	VA0003697	187,000	1,523
H05R	Greif Inc.	VA0006408	73,246	29,694
H31R	Lake Monticello STP	VA0024945	18,182	1,515
H05R	Lynchburg STP[1]	VA0024970	536,019	33,501
H28R	Moores Creek Regional STP	VA0025518	274,100	22,842
H38R	Powhatan CC STP	VA0020699	8,588	716
J11R	Crewe WWTP	VA0020303	9,137	761
J01R	Farmville WWTP	VA0083135	43,856	3,655
G02E	~~R. J. Reynolds~~ The Sustainability Park, LLC	VA0002780	25,583	1,919
G01E	E I du Pont - Spruance	VA0004669	201,080	7,816
G01E	Falling Creek WWTP	VA0024996	153,801	15,380
G01E	Henrico County WWTP	VA0063690	1,142,085	114,209
G03E	Honeywell – Hopewell	VA0005291	1,090,798	51,592
G03R	Hopewell WWTP	VA0066630	1,827,336	76,139
G15E	HRSD – Boat Harbor STP	VA0081256	740,000	76,139
G11E	HRSD – James River STP	VA0081272	1,250,000	60,911
G10E	HRSD – Williamsburg STP	VA0081302	800,000	68,525
G02E	Philip Morris – Park 500	VA0026557	139,724	2,650
G01E	Proctors Creek WWTP	VA0060194	411,151	41,115
G01E	Richmond WWTP[1]	VA0063177	1,096,402	68,525
G02E	Dominion-Chesterfield[2]	VA0004146	352,036	210
J15R	South Central WW Authority	VA0025437	350,239	35,024
G07R	Chickahominy WWTP	VA0088480	6,167	123
G05R	Tyson Foods – Glen Allen	VA0004031	19,552	409

G11E	HRSD – Nansemond STP	VA0081299	750,000	91,367
G15E	HRSD – Army Base STP	VA0081230	610,000	54,820
G15E	HRSD – VIP WWTP	VA0081281	750,000	121,822
G15E	JH Miles & Company	VA0003263	153,500	21,500
C07E	HRSD – Ches.-Elizabeth STP	VA0081264	1,100,000	108,674
	TOTALS		14,901,739	1,354,375

Notes:
[1]Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 8.0 mg/l and a TP concentration of 1.0 mg/l.

[2]Wasteload allocations are "net" loads, based on the portion of the nutrient discharge introduced by the facility's process waste streams, and not originating in raw water intake.

9VAC25-720-70. Rappahannock River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-70 are not amended; therefore, the text of those subsections is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
E09R	Culpeper WWTP[1]	VA0061590	~~54,820~~ 73,093	~~4,112~~ 5,483
E02R	Marshall WWTP	VA0031763	7,797	585
~~E09R~~	~~Mountain Run STP[2]~~	~~VA0090212~~	~~30,456~~	~~2,284~~
E13R	Orange STP	VA0021385	36,547	2,741
E11R	Rapidan STP	VA0090948	7,309	548
E02R	Fauquier County Water & Sewer Authority-Remington WWTP[3]	VA0076805	~~30,456~~ 24,364	~~2,284~~ 1,827
E02R	Clevengers ~~Corner STP~~[4] Village WWTP	VA0080527	10,964	822
E02R	Warrenton Town STP	VA0021172	30,456	2,284
E18R	Wilderness WWTP	VA0083411	15,228	1,142
E20E	FMC WWTF	VA0068110	~~65,784~~ 48,737	~~4,934~~ 3,655
E20E	Fredericksburg WWTF	VA0025127	54,820	4,112
E21E	Haymount WWTF[5]	VA0089125	~~11,695~~ 7,066	~~877~~ 530
E24E	Haynesville CC WWTP	VA0023469	2,802	210
E21E	Hopyard Farms STP	VA0089338	6,091	457
E20E	Little Falls Run WWTF	VA0076392	97,458	7,309

E20E	Massaponax WWTF	VA0025658	~~97,458~~ 114,505	~~7,309~~ 8,405
E23R	Montross Westmoreland WWTP	VA0072729	1,584	119
E21E	Oakland Park STP	VA0086789	1,706	128
E23E	Tappahannock WWTP	VA0071471	9,746	731
E26E	Urbanna WWTP	VA0026263	1,218	91
E21R	US Army - Ft. A P Hill WWTP	VA0032034	6,457	484
E23E	Warsaw Aerated Lagoons	VA0026891	3,655	274
C01E	Omega Protein - Reedville	VA0003867	21,213	1,591
C01E	Reedville Sanitary District	VA0060712	2,436	183
C01E	Kilmarnock WTP	VA0020788	6,091	457
	Unallocated Reserve WLA		22,904	1,900
	TOTALS:		614,245	46,068

~~Notes:~~

~~[1]Town of Culpeper WWTP: wasteload allocations (WLAs) based on a design flow capacity of 4.5 million gallons per day (MGD). If plant is not certified to operate at 4.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.~~

~~[2]Mountain Run STP: wasteload allocations (WLAs) based on a design flow capacity of 2.5 million gallons per day (MGD). If plant is not certified to operate at 2.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 18,273 lbs/yr; TP = 1,371 lbs/yr, based on a design flow capacity of 1.5 MGD.~~

~~[3]Fauquier Co. W&SA Remington STP: wasteload allocations (WLAs) based on a design flow capacity of 2.5 million gallons per day (MGD). If plant is not certified to operate at 2.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 24,364 lbs/yr; TP = 1,827 lbs/yr, based on a design flow capacity of 2.0 MGD.~~

~~[4]Clevengers Corner STP: wasteload allocations (WLAs) based on a design flow capacity of 0.9 million gallons per day (MGD). If plant is not certified to operate at 0.9 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.~~

~~[5]Haymount STP: wasteload allocations (WLAs) based on a design flow capacity of 0.96 million gallons per day (MGD). If plant is not certified to operate at 0.96 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,066 lbs/yr; TP = 530 lbs/yr, based on a design flow capacity of 0.58 MGD.~~

9VAC25-720-110. Chesapeake Bay -- Small Coastal -- Eastern Shore River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-110 are not amended; therefore, the text of those subsections is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
C16E	Cape Charles Town WWTP[1]	VA0021288	~~6,091~~ 3,046	~~457~~ 228
C11E	Onancock WWTP[2]	VA0021253	9,137	685
C13E	Shore Memorial Hospital	VA0027537	1,218	91

C10E	Tangier WWTP	VA0067423	1,218	91
C10R	Tyson Foods – Temperanceville	VA0004049	22,842	1,142
	Unallocated Reserve WLA		3,045	229
	TOTALS:		40,506	2,467

~~Notes:~~

~~[1]Cape Charles STP: wasteload allocations (WLAs) based on a design flow capacity of 0.5 million gallons per day (MGD). If plant is not certified to operate at 0.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.~~

~~[2]Onancock STP: wasteload allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.~~

9VAC25-720-120. York River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-120 are not amended; therefore, the text of those subsections is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
F20R	Caroline County STP	VA0073504	9,137	~~1,066~~ 609
F01R	Gordonsville STP	VA0021105	17,177	~~2,004~~ 1,145
F04R	Ashland WWTP	VA0024899	36,547	~~4,264~~ 2,436
F09R	Doswell WWTP	VA0029521	18,273	~~2,132~~ 1,218
F09R	Bear Island Paper Company	VA0029521	47,328	~~12,791~~ 10,233
F27E	~~Giant Yorktown Refinery~~ Plains Marketing L.P. - Yorktown	VA0003018	167,128	~~22,111~~ 17,689
F27E	HRSD - York River STP	VA0081311	~~274,100~~ 275,927	~~31,978~~ 18,395
F14R	Parham Landing WWTP[1]	VA0088331	36,547	~~4,264~~ 2,436
F14E	~~Smurfit Stone~~ RockTenn CP LLC - West Point	VA0003115	259,177	~~70,048~~ 56,038
F12E	Totopotomoy WWTP	VA0089915	182,734	~~21,319~~ 12,182
F25E	HRSD - West Point STP	VA0075434	10,964	~~1,279~~ 731

~~C04E~~	~~HRSD - Mathews Courthouse STP~~	~~VA0028819~~	~~1,827~~	~~213~~
	TOTALS:		1,060,939	~~173,469~~ 123,112

~~Notes:~~
~~[1]Parham Landing WWTP: wasteload allocations (WLAs) based on a design flow capacity of 2.0 million gallons per day (MGD). If plant is not certified to operate at 2.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 10,416 lbs/yr; TP = 1,215 lbs/yr, based on a design flow capacity of 0.57 MGD.~~

VA.R. Doc. No. R15-3867; Filed May 27, 2015, 11:31 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-780. Local and Regional Water Supply Planning (amending 9VAC25-780-30).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.38:1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 15, 2015.

Effective Date: July 30, 2015.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, TTY (804) 698-4021, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia authorizes the State Water Control Board to promulgate this regulation.

This regulation was developed to implement the mandate of § 62.1-44.38:1 of the Code of Virginia, which requires that: "The Board, with the advice and guidance from the Commissioner of Health, local governments, public service authorities, and other interested parties, shall establish a comprehensive water supply planning process for the development of local, regional and state water supply plans consistent with the provisions of this chapter." The State Water Control Board adopted the Local and Regional Water Supply Planning regulation in 2005 and amended it in 2006.

Purpose: This regulation was last amended in 2006. Since that time, other regulations referenced by this regulation have been updated. This regulation needs to be amended to reference the regulations that are currently in effect to avoid confusion concerning which regulations are applicable. This regulatory change will make the Local and Regional Water Supply regulation reference current versions of other water regulations, thereby promoting the public health, welfare, and safety.

Rationale for Using Fast-Track Process: The board anticipates that this rulemaking will be noncontroversial since the changes will update the Local and Regional Water Supply Planning regulation to include references to other water regulations that the board has previously adopted and are currently effective. The regulated community is required to comply with versions of regulations that are currently in effect. This change will eliminate confusion concerning which versions of regulations are referenced by the Local and Regional Water Supply Planning regulation.

Substance: The revisions to the regulation are minor. The regulation is being updated to remove the effective year of the Virginia Water Protection Permit Program Regulation and the Surface Water Management Area Regulation referenced in the regulation. Both the Virginia Water Protection Permit Program Regulation and the Surface Water Management Area Regulation have been amended since 2004, and the year 2004 is being stricken from the regulation.

Issues: The primary advantages to the public, agency, and Commonwealth will be that the regulation will reference the current version of the Virginia Water Protection Permit Program Regulation and the Surface Water Management Area Regulation. This amendment will avoid confusion concerning the version of the regulation the regulated community should comply with. The regulated community must comply with the current effective versions of the Virginia Water Protection Permit Program Regulation and the Surface Water Management Area Regulation; however, since the regulation references the 2004 versions of these regulations, the regulated community may interpret this to mean they must comply with the requirements of both versions of these regulations. There are no disadvantages to the public, agency, or Commonwealth associated with these regulatory revisions.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (board) proposes to update the names of two regulations referenced in the local and regional water supply regulation (water supply regulation).

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Updating the names of referenced regulations will be beneficial in that it will reduce the likelihood of confusion by readers of this regulation. The proposed change will have no other impact.

Businesses and Entities Affected. This regulation establishes a comprehensive water supply planning process for the development of local, regional, and state water supply plans. The proposed update of names of referenced regulations affects any entity or individual who has an interest in these plans.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments will not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not create an adverse impact for small businesses.

Real Estate Development Costs. The proposed amendments will not affect real estate development costs.

Legal Mandate. General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- 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, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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

Summary:

The amendments remove obsolete effective dates for the Virginia Water Protection Permit Program Regulation and the Surface Water Management Area Regulation referenced in the regulation.

9VAC25-780-30. Definitions.

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia; the Ground Water Management Act of 1992, Chapter ~~2.5~~ 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia; the Virginia Water Protection Permit Program Regulation, 9VAC25-210 ~~(2004)~~; and the Surface Water Management Area Regulation, 9VAC25-220 ~~(2004)~~, including any general permits issued thereunder.

"Beneficial use" means both in-stream and offstream uses. In-stream 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.

"Board" means the State Water Control Board.

"Community water system" means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, and is regulated by the Virginia Department of Health Waterworks Regulation (12VAC5-590).

"Conservation" means practices, techniques, and technologies that improve the efficiency of water use.

"Department" means the Department of Environmental Quality.

"Local government" means a city, incorporated town or county.

"Local program" means the combined water plan, resource conditions, and drought response and contingency plan developed in compliance with this regulation. The term "local program" will be used in this regulation to mean either local or regional programs. The term "program" implies the institution of a continuous planning process for maintenance of these documents.

"Planning area" means the geographical area as defined by local government boundaries that is included in a local or regional water supply plan.

"Planning period" means the 30-year to 50-year time frame used by the locality to project future water demand in accordance with 9VAC25-780-100 B.

"Regional planning unit" means a collection of local governments who have voluntarily elected to develop and submit a regional water plan. A regional planning unit may be composed of all local governments located within the bounds of a planning district, any subset of local governments within the bounds of a planning district, or any group of local governments within multiple planning districts.

"Regional water plan" means a water plan developed and submitted by two or more cities or counties or both. A town and an adjacent county may develop a regional water plan. Two or more towns may develop and submit a regional water plan where the plan results in the proposed development of future water supply projects that ~~supply~~ address the water supply demands of the affected towns. Such plans developed by two or more towns may be included in regional water plans developed and submitted by counties or cities. Regional water plans shall be developed and submitted in conjunction with all public service authorities operating community water systems within the regional planning unit, if applicable.

"Self-supplied user" means any person making a withdrawal of surface water or ground water from an original source (e.g., a river, stream, lake, aquifer, or reservoir fed by any such water body) for their own use. Self-supplied users do not receive water from a community water system.

"Service area" means the geographical area served by a community water system.

"Technical evaluation committee" means a committee of state agencies, including but not limited to the Department of Health, the Department of Conservation and Recreation, the Marine Resources Commission, the Department of Historic Resources, and the Department of Game and Inland Fisheries, convened by the Department of Environmental Quality in accordance with subdivision 8 of 9VAC25-780-60 to provide comments on the impacts to or conflicts among in-stream and offstream uses resulting from proposed alternatives for meeting projected water demands.

"Unaccounted for losses" means the difference between a community water system's billing records for volumes of water distributed and production records for volumes of water treated.

"Water demand management" means plans for water conservation, reuse, and reducing unaccounted for water losses contained in a local program.

"Water plan" means a document developed in compliance with this regulation. The term "water plan" will be used in this regulation to mean either local or regional water plans.

"Water sources" means wells, stream intakes, and reservoirs that serve as sources of water supplies.

VA.R. Doc. No. R15-4070; Filed May 27, 2015, 11:33 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Extension of Emergency Regulation

Title of Regulation: **12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-800, 12VAC30-130-810, 12VAC30-130-820).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Expiration Date Extended Through: December 15, 2015.

The Governor has approved the Department of Medical Assistance's request to extend the expiration date of the above-referenced emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation pertaining to client medical management will continue in effect through December 15, 2015. The emergency regulation was published in 30:10 VA.R. 1335-1343 January 13, 2014. The extension is required for the department to continue enforcing the legislative mandate set out in Item 307 UU of Chapter 3 of the 2012 Acts of Assembly, Special Session I.

Agency Contact: Emily McClellan, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300 or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R14-2290; Filed June 4, 2015, 9:10 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Final Regulation

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18VAC90-30-10, 18VAC90-30-90, 18VAC90-30-100, 18VAC90-30-105, 18VAC90-30-120, 18VAC90-30-121; adding 18VAC90-30-122).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: July 15, 2015.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments (i) make requirements for prescriptive authority for nurse practitioners so that they are consistent with the model of collaboration for patient care teams and (ii) modify terminology and criteria for practice consistent with changes to the Code of Virginia as enacted in Chapter 213 of the 2012 Acts of the Assembly.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
General Provisions

18VAC90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, Commission on Collegiate Nursing Education or the National League for Nursing Accrediting Commission or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing ~~which~~ that grant a graduate degree in nursing and which hold a national accreditation acceptable to the boards.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments, and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem solving, and arranging for referrals, testing, or studies.

~~"Controlling institution" means the college or university offering a nurse practitioner education program.~~

"Licensed nurse practitioner" means ~~a~~ an advanced practice registered nurse who has met the requirements for licensure as stated in Part II (18VAC90-30-60 et seq.) of this chapter.

~~"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathic medicine.~~

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U.S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Patient care team physician" means a person who holds an active, unrestricted license issued by the Virginia Board of Medicine to practice medicine or osteopathic medicine.

~~"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.~~

~~"Protocol"~~ "Practice agreement" means a written or electronic statement, jointly developed by the collaborating patient care team physician(s) and the licensed nurse practitioner(s) that ~~directs and~~ describes the procedures to be followed and the ~~delegated medical~~ acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients. The practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable.

18VAC90-30-90. Certifying agencies.

A. The boards shall accept the professional certification by examination of the following:

1. American ~~College of Nurse Midwives~~ Midwifery Certification ~~Council~~ Board;

2. American Nurses Credentialing Center;

3. ~~Council on Certification of Nurse Anesthetists~~ National Board of Certification and Recertification for Nurse Anesthetists;

4. Pediatric Nursing Certification Board;

5. National Certification Corporation ~~for the Obstetric, Gynecologic and Neonatal Nursing Specialties~~; and

6. American Academy of Nurse Practitioners.

B. The boards may accept professional certification from other certifying agencies on recommendation of the Committee of the Joint Boards of Nursing and Medicine provided the agency meets the definition of a national certifying body set forth in 18VAC90-30-10 and that the professional certification is awarded on the basis of:

1. Completion of an approved ~~educational~~ program as defined in 18VAC90-30-10; and

2. Achievement of a passing score on an examination.

18VAC90-30-100. Renewal of licensure.

A. Licensure of a nurse practitioner shall be renewed:

1. Biennially at the same time the license to practice as a registered nurse in Virginia is renewed; or

2. If licensed as a nurse practitioner with a multistate licensure privilege to practice in Virginia as a registered

nurse, a licensee born in even-numbered years shall renew his license by the last day of the birth month in even-numbered years and a licensee born in odd-numbered years shall renew his license by the last day of the birth month in odd-numbered years.

B. The renewal notice of the license shall be ~~mailed~~ sent to the last known address of record of each nurse practitioner. Failure to receive the renewal notice shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

C. The licensed nurse practitioner shall attest to compliance with continuing competency requirements of current professional certification or continuing education as prescribed in 18VAC90-30-105 and the license renewal fee prescribed in 18VAC90-30-50.

D. The license shall automatically lapse if the licensee fails to renew by the expiration date. Any person practicing as a nurse practitioner during the time a license has lapsed shall be subject to disciplinary actions by the boards.

18VAC90-30-105. Continuing competency requirements.

A. In order to renew a license biennially, a nurse practitioner initially licensed on or after May 8, 2002, shall hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90.

B. In order to renew a license biennially ~~on or after January 1, 2004~~, nurse practitioners licensed prior to May 8, 2002, shall meet one of the following requirements:

1. Hold current professional certification in the area of specialty practice from one of the certifying agencies designated in 18VAC90-30-90; or

2. Complete at least 40 hours of continuing education in the area of specialty practice approved by one of the certifying agencies designated in 18VAC90-30-90 or approved by Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association as a Category I Continuing Medical Education (CME) course.

C. The nurse practitioner shall retain evidence of compliance and all supporting documentation for a period of four years following the renewal period for which the records apply.

D. The boards shall periodically conduct a random audit of ~~its~~ their licensees to determine compliance. The nurse practitioners selected for the audit shall provide the evidence of compliance and supporting documentation within 30 days of receiving notification of the audit.

E. The boards may delegate the authority to grant an extension or exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part III
Practice of Licensed Nurse Practitioners

18VAC90-30-120. Practice of licensed nurse practitioners other than certified registered nurse ~~midwives~~ anesthetists.

A. A nurse practitioner licensed in a category other than certified registered nurse ~~midwife~~ anesthetist shall be authorized to ~~engage in practices constituting the practice of medicine~~ render care in collaboration and consultation with ~~and under the medical direction and supervision of~~ a licensed patient care team physician as part of a patient care team.

B. The practice of all licensed nurse practitioners shall be based on specialty education preparation as ~~a nurse practitioner~~ an advanced practice registered nurse in accordance with standards of the applicable certifying organization ~~and written protocols as defined in 18VAC90-30-10~~, as identified in 18VAC90-30-90. A nurse practitioner licensed in the category of a certified nurse midwife shall practice in accordance with the Standards for the Practice of Midwifery (Revised 2011) defined by the American College of Nurse-Midwives.

~~C. The licensed nurse practitioner shall maintain a copy of the written protocol and shall make it available to the boards upon request. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, referral to physical therapy, and endorsements provided it is:~~

~~1. In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician;~~

~~2. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and~~

~~3. Not in conflict with federal law or regulation.~~

~~D. A certified registered nurse anesthetist shall practice in accordance with the functions and standards defined by the American Association of Nurse Anesthetists (Scope and Standards for Nurse Anesthesia Practice, Revised 2005) and under the medical direction and supervision of a doctor of medicine or a doctor of osteopathic medicine or the medical direction and supervision of a dentist in accordance with rules and regulations promulgated by the Board of Dentistry.~~

~~E. For purposes of this section, the following definitions shall apply:~~

~~"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.~~

~~"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and~~

~~define consultation among the collaborating parties and the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.~~

18VAC90-30-121. Practice of nurse practitioners licensed as certified registered nurse ~~midwives~~ anesthetists.

~~A. A nurse practitioner licensed as a certified nurse midwife shall be authorized to engage in practices constituting the practice of medicine in collaboration and consultation with a licensed physician.~~

~~B. The practice of certified nurse midwives shall be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols as defined in 18VAC90-30-10.~~

~~C. The licensed nurse practitioner shall maintain a copy of the written protocol and shall make it available to the boards upon request. The written protocol shall include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, referral to physical therapy, and endorsements provided it is:~~

~~1. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the supervising physician;~~

~~2. Permitted by § 54.1-2957.02 of the Code of Virginia or applicable sections of the Code of Virginia; and~~

~~3. Not in conflict with federal law or regulation.~~

~~D. A certified nurse midwife, in collaboration and consultation with a duly licensed physician, shall practice in accordance with the Standards for the Practice of Nurse-Midwifery (Revised 2003) defined by the American College of Nurse-Midwives.~~

~~E. For purposes of this section, the following definition shall apply:~~

~~"Collaboration and consultation" means practice in accordance with the Standards for the Practice of Midwifery (Revised 2003) defined by the American College of Nurse-Midwives to include participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications that provide for and define consultation among the collaborating parties and the patient; periodic joint evaluation of services provided; and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.~~

A. A nurse practitioner licensed in a category of certified registered nurse anesthetist shall be authorized to render care under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry.

B. The practice of a certified registered nurse anesthetist shall be based on specialty education preparation as an advanced practice registered nurse in accordance with standards of the applicable certifying organization and with the functions and standards defined by the American Association of Nurse Anesthetists (Standards for Nurse Anesthesia Practice, Revised 2013).

18VAC90-30-122. Practice agreements.

A. All nurse practitioners licensed in any category shall practice in accordance with a written or electronic practice agreement as defined in 18VAC90-30-10.

B. The written or electronic practice agreement shall include provisions for:

1. The periodic review of patient charts or electronic patient records by a patient care team physician and may include provisions for visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team;

2. Appropriate physician input in complex clinical cases and patient emergencies and for referrals; and

3. The nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits, and endorsements provided it is:

a. In accordance with the specialty license of the nurse practitioner and within the scope of practice of the patient care team physician;

b. Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and

c. Not in conflict with federal law or regulation.

C. The practice agreement shall be maintained by the nurse practitioner and provided to the boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse practitioner shall be responsible for providing a copy to the boards upon request.

DOCUMENTS INCORPORATED BY REFERENCE (18VAC90-30)

~~Scope and Standards for Nurse Anesthesia Practice, revised 2005, American Association of Nurse Anesthetists.~~

~~Standards for the Practice of Midwifery, revised 2003, American College of Nurse-Midwives.~~

Standards for Nurse Anesthesia Practice, revised 2013, American Association of Nurse Anesthetists

Standards for the Practice of Midwifery, revised 2011, American College of Nurse-Midwives

VA.R. Doc. No. R13-3349; Filed May 21, 2015, 7:43 a.m.

Final Regulation

Title of Regulation: **18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners (amending 18VAC90-40-10, 18VAC90-40-40, 18VAC90-40-60, 18VAC90-40-90, 18VAC90-40-110, 18VAC90-40-130; repealing 18VAC90-40-100).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Effective Date: July 15, 2015.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments revise (i) requirements for prescriptive authority for nurse practitioners so that they are consistent with the model of collaboration for patient care teams and (ii) terminology and criteria for practice consistent with changes to the Code of Virginia as enacted in Chapter 213 of the 2012 Acts of the Assembly.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
General Provisions

18VAC90-40-10. Definitions.

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

"Boards" means the Virginia Board of Medicine and the Virginia Board of Nursing.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Nonprofit health care clinics or programs" means a clinic organized in whole or in part for the delivery of health care services without charge or when a reasonable minimum fee is charged only to cover administrative costs.

"Nurse practitioner" means ~~a~~ an advanced practice registered nurse who has met the requirements for licensure as a nurse practitioner as stated in 18VAC90-30.

"Practice agreement" means a written or electronic agreement jointly developed by the ~~supervising~~ patient care team physician and the nurse practitioner for the practice of the nurse practitioner that also describes ~~and directs~~ the prescriptive authority of the nurse practitioner, if applicable.

~~"Supervision" means that the physician documents being readily available for medical consultation with the licensed nurse practitioner or the patient, with the physician collaborating with the nurse practitioner for the agreed upon course of treatment and medications prescribed.~~

18VAC90-40-40. Qualifications for initial approval of prescriptive authority.

An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a nurse practitioner in the Commonwealth of Virginia; and

2. Provide evidence of one of the following:

a. Continued professional certification as required for initial licensure as a nurse practitioner; or

b. Satisfactory completion of a graduate level course in pharmacology or pharmacotherapeutics obtained as part of the nurse practitioner education program within the five years prior to submission of the application; or

c. Practice as a nurse practitioner for no less than 1000 hours and 15 continuing education units related to the area of practice for each of the two years immediately prior to submission of the application; or

d. Thirty contact hours of education in pharmacology or pharmacotherapeutics acceptable to the boards taken within five years prior to submission of the application. The 30 contact hours may be obtained in a formal academic setting as a discrete offering or as noncredit continuing education offerings and shall include the following course content:

(1) Applicable federal and state laws;

(2) Prescription writing;

(3) Drug selection, dosage, and route;

(4) Drug interactions;

(5) Information resources; and

(6) Clinical application of pharmacology related to specific scope of practice.

3. ~~Submit~~ Develop a practice agreement between the nurse practitioner and the ~~supervising~~ patient care team physician as required in 18VAC90-40-90~~. The practice agreement must be approved by the boards prior to issuance of prescriptive authority~~; and

4. File a completed application and pay the fees as required in 18VAC90-40-70.

18VAC90-40-60. Reinstatement of prescriptive authority.

A. A nurse practitioner whose prescriptive authority has lapsed may reinstate within one renewal period by payment of the current renewal fee and the late renewal fee.

B. A nurse practitioner who is applying for reinstatement of lapsed prescriptive authority after one renewal period shall:

1. File the required application ~~and a new practice agreement~~;

2. Provide evidence of a current, unrestricted license to practice as a nurse practitioner in Virginia;

3. Pay the fee required for reinstatement of a lapsed authorization as prescribed in 18VAC90-40-70; and

4. If the authorization has lapsed for a period of two or more years, the applicant shall provide proof of:

a. Continued practice as a licensed nurse practitioner with prescriptive authority in another state; or

b. Continuing education, in addition to the minimal requirements for current professional certification, consisting of four contact hours in pharmacology or pharmacotherapeutics for each year in which the prescriptive authority has been lapsed in the Commonwealth, not to exceed a total of 16 hours.

C. An applicant for reinstatement of suspended or revoked authorization shall:

1. Petition for reinstatement and pay the fee for reinstatement of a suspended or revoked authorization as prescribed in 18VAC90-40-70;

2. Present evidence of competence to resume practice as a nurse practitioner with prescriptive authority; and

3. Meet the qualifications and resubmit the application required for initial authorization in 18VAC90-40-40.

Part III
Practice Requirements

18VAC90-40-90. Practice agreement.

A. A nurse practitioner with prescriptive authority may prescribe only within the scope of ~~a~~ the written or electronic practice agreement with a ~~supervising~~ patient care team physician ~~to be submitted with the initial application for prescriptive authority~~.

B. At any time there are changes in the ~~primary supervising~~ patient care team physician, authorization to prescribe, or scope of practice, the nurse practitioner shall ~~submit a revised~~ revise the practice agreement ~~to the board~~ and maintain the revised agreement.

C. The practice agreement shall contain the following:

1. A description of the prescriptive authority of the nurse practitioner within the scope allowed by law and the practice of the nurse practitioner.

2. An authorization for categories of drugs and devices within the requirements of § 54.1-2957.01 of the Code of Virginia.

3. The ~~signatures of the primary supervising physician and any secondary physician who may be regularly called upon in the event of the absence of the primary physician~~ signature of the patient care team physician who is practicing with the nurse practitioner or a clear statement of the name of the patient care team physician who has entered into the practice agreement.

D. In accordance with § 54.1-2957.01 of the Code of Virginia, a physician shall not serve as a patient care team physician to more than six nurse practitioners with prescriptive authority at any one time.

18VAC90-40-100. ~~Supervision and site visits.~~ (Repealed.)

~~A. In accordance with § 54.1-2957.01 of the Code of Virginia, physicians who enter into a practice agreement with a nurse practitioner for prescriptive authority shall supervise and direct, at any one time, no more than four nurse practitioners with prescriptive authority.~~

~~B. Except as provided in subsection C of this section, physicians shall regularly practice in any location in which the licensed nurse practitioner exercises prescriptive authority.~~

~~1. A separate practice setting may not be established for the nurse practitioner.~~

~~2. A supervising physician shall conduct a regular, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.~~

~~C. Physicians who practice with a certified nurse midwife or with a nurse practitioner employed by or under contract with local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs shall:~~

~~1. Either regularly practice at the same location with the nurse practitioner or provide supervisory services to such separate practices by making regular site visits for consultation and direction for appropriate patient management. The site visits shall occur in accordance with the protocol, but no less frequently than once a quarter.~~

~~2. Conduct a regular, random review of patient charts on which the nurse practitioner has entered a prescription for an approved drug or device.~~

18VAC90-40-110. Disclosure.

A. The nurse practitioner shall include on each prescription written or dispensed his signature ~~and prescriptive authority number as issued by the boards~~ and the Drug Enforcement Administration (DEA) number, when applicable. If his practice agreement authorizes prescribing of only Schedule VI drugs and the nurse practitioner does not have a DEA number, he shall include the prescriptive authority number as issued by the boards.

B. The nurse practitioner shall disclose to patients at the initial encounter that he is a licensed nurse practitioner ~~and the name, address and telephone number of the supervising physician~~. Such disclosure may be included on a prescription pad or may be given in writing to the patient.

C. The nurse practitioner shall disclose, upon request of a patient or a patient's legal representative, the name of the patient care team physician and information regarding how to contact the patient care team physician.

Part IV
Discipline

18VAC90-40-130. Grounds for disciplinary action.

A. The boards may deny approval of prescriptive authority, revoke or suspend authorization, or take other disciplinary actions against a nurse practitioner who:

1. Exceeds his authority to prescribe or prescribes outside of the written practice agreement with the ~~supervising~~ patient care team physician;

2. Has had his license as a nurse practitioner suspended, revoked, or otherwise disciplined by the boards pursuant to 18VAC90-30-220;

3. Fails to comply with requirements for continuing competency as set forth in 18VAC90-40-55.

B. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall be grounds for disciplinary action.

VA.R. Doc. No. R13-3350; Filed May 21, 2015, 7:44 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department for Aging and Rehabilitative 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 where no agency discretion is involved. The department will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC30-40. Protections of Participants in Human Research (amending 22VAC30-40-10, 22VAC30-40-30, 22VAC30-40-50).**

Statutory Authority: §§ 51.5-131 and 51.5-132 of the Code of Virginia.

Effective Date: July 15, 2015.

Agency Contact: Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email vanessa.rakestraw@dars.virginia.gov.

Summary:

The amendments change the name of the Woodrow Wilson Rehabilitation Center to Wilson Workforce and Rehabilitation Center pursuant to Chapter 542 of the 2015 Acts of Assembly.

22VAC30-40-10. Definitions.

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

"Affiliated with the covered entity" means employed by the covered entity or a member of a household containing an employee of the covered entity.

"Agent" means any individual performing department-designated activities or exercising department-delegated authority or responsibility.

"Assent" means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

"Commissioner" means the Commissioner of the Department for Aging and Rehabilitative Services.

"Covered entity" means the Department for Aging and Rehabilitative Services, ~~Woodrow~~ the Wilson Workforce and Rehabilitation Center, sheltered workshops, or independent living centers.

"Department" means the Department for Aging and Rehabilitative Services.

"Guardian" means an individual who is authorized under applicable state or local law to consent on behalf of a minor to general medical care.

"Human Research Review Committee" or "HRRC" means the committee established in accordance with and for the purposes expressed in this chapter.

"HRRC approval" means the determination of the HRRC that the research has been reviewed and may be conducted within the constraints set forth by the HRRC and by other department, state, and federal requirements.

"Human participant or human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains:

1. Data through intervention or interaction with the individual; or

2. Identifiable private information.

"Human subject research" means a systematic investigation, experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) in which a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual or obtains identifiable private information.

"Identifiable private information" means information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (for example, a medical record~~,~~ or social security number). Private

information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) to constitute research involving human subjects.

"Independent living center" means a consumer-controlled, community-based, cross disability, nonresidential private nonprofit agency that:

1. Is designed and operated within a local community by individuals with disabilities; and

2. Provides an array of independent living services.

"Informed consent" means a process by which the investigator fully explains the research activities~~,~~ and ensures that the prospective subject has sufficient opportunity to ask questions~~,~~ and has sufficient time to make a decision whether or not to participate in the research prior to signing the HRRC-approved written consent document. Informed consent must be prospectively obtained without coercion, include all of the basic elements of informed consent as specified in 22VAC30-40-100 B, be legally effective, contain no exculpatory language, and as required, include the additional elements of informed consent specified in 22VAC30-40-100 C.

"Institution" means any public or private entity or agency (including federal, state, and other agencies).

"Interaction" means communication or interpersonal contact between investigator and subject.

"Intervention" means both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or subject's environment that are performed for research purposes.

"Investigator" means the person, whether professional or student, who conducts the research.

"Legally authorized representative," as defined in § 32.1-162.16 of the Code of Virginia, means, in the following specified order of priority:

1. The parent or parents having custody of a prospective subject who is a minor;

2. The agent appointed under an advance directive, as defined in § 54.1-2982 of the Code of Virginia, executed by the prospective subject, provided the advance directive authorizes the agent to make decisions regarding the prospective subject's participation in human research;

3. The legal guardian of a prospective subject;

4. The spouse of the prospective subject, except where a suit for divorce has been filed and the divorce decree is not yet final;

5. An adult child of the prospective subject;

6. A parent of the prospective subject when the subject is an adult;

7. An adult brother or sister of the prospective subject; or

8. Any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective subject to such subject's participation in the particular human research.

For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective subject to such subject's participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution, or agency conducting the human research. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Minor," as defined in § 1-207 of the Code of Virginia, means an individual who is less than 18 years of age.

"Nontherapeutic research" means human subject research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the subject.

"Parent" means a minor's biological or adoptive parent.

"Permission" means the agreement of parent(s) or a legally authorized representative to the participation of their minor or ward in research.

"Private information" means information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, or information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the human participant is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human participants.

"Research" means a systematic investigation designed to develop or contribute to generalizable knowledge (basic research) or specific knowledge (applied research). Activities that meet this definition constitute research for purposes of this chapter, whether or not they are supported or funded under a program that is considered research for other purposes. For example, some "demonstration" and "service" programs may include research activities.

"Sheltered workshop" means a program that (i) provides directly or facilitates the provision of one or more vocational rehabilitation services enumerated in 34 CFR 361.5(b)(9)(i) to individuals with disabilities to enable them to maximize their opportunities for employment, including career advancement; (ii)

has a vendor relationship with the department; and (iii) is not operated by a community services board.

22VAC30-40-30. Applicability.

This chapter shall apply to the Department for Aging and Rehabilitative Services, ~~Woodrow~~ the Wilson Workforce and Rehabilitation Center, sheltered workshops, and independent living centers, known as covered entities.

22VAC30-40-50. Certification process.

A. No later than 45 days after the end of each state fiscal year, ~~Woodrow~~ the Wilson Workforce and Rehabilitation Center, sheltered workshops, and independent living centers shall send a written report to the commissioner giving assurance that either all human subjects research conducted during the fiscal year was reviewed and approved by the department's HRRC prior to implementation of that research or that no human subjects research was conducted during that state fiscal year.

B. At the time that the research is approved by the HRRC, the HRRC chairperson shall send to the commissioner a description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of prospective human subjects in the research project, a description of what will be done to prospective human subjects, and the type of review performed by the HRRC.

C. The commissioner may inspect the records of the department's HRRC.

D. The HRRC shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the HRRC's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the HRRC's action and shall be reported promptly to the research investigator, the commissioner, the head(s) of other appropriate covered entities, and in the case of cooperative research, the institutional officials responsible for human subjects research.

E. Research covered by this chapter that has been approved by the HRRC may be subject to further appropriate review and approval or disapproval by officials of the covered entities. However, those officials may not approve the research if it has not been approved by the HRRC.

VA.R. Doc. No. R15-4411; Filed May 26, 2015, 2:14 p.m.

GUIDANCE DOCUMENTS

Sections 2.2-4008 and 2.2-4103 of the Code of Virginia require annual publication in the *Virginia Register* of guidance document lists from state agencies covered by the Administrative Process Act and the Virginia Register Act. A guidance document is defined as "…any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

GEORGE MASON UNIVERSITY

Copies of the following documents may be viewed during regular work days from 9 a.m. to 4 p.m. in the Office of Compliance, Equity, and Diversity, c/o University Policy Manager, 346 Research Hall, George Mason University, 4400 University Drive, Fairfax, VA. Copies may be obtained free of charge by contacting Elizabeth Woodley, University Policy Manager, at the same address, telephone (703) 993-8730, FAX (703) 993-8899, or email ewoodley@gmu.edu. The documents may be downloaded from the George Mason University website at http://www.gmu.edu.

Questions regarding interpretation or implementation of these guidance documents may be directed to Ms. Woodley.

Guidance Documents:

Board of Visitors Bylaws (amended 2014)
http://bov.gmu.edu/docs/bov_bylaws.pdf

Faculty Handbook (2014)
http://www.gmu.edu/resources/facstaff/handbook/

Employee Handbook http://hr.gmu.edu/handbook/

University Catalog, 2015-16 http://catalog.gmu.edu/

Honor Code http://oai.gmu.edu/the-mason-honor-code-2/

Resident Student Handbook http://housing.gmu.edu/policies/

Annual Security Reports http://police.gmu.edu/annual-security-report/

Parking and Traffic Procedures http://parking.gmu.edu/

University Policies http://universitypolicy.gmu.edu/

DEPARTMENT OF SMALL BUSINESS AND SUPPLIER DIVERSITY

Copies of the following document may be viewed during regular work days from 8 a.m. to 5 p.m. in the office of the Virginia Department of Small Business and Supplier Diversity, 1111 East Main Street, Suite 300, Richmond, VA 23219. Questions regarding interpretation or implementation of this document or to obtain copies free of charge, please contact Mr. Duc Truong, at the same address, or via telephone at (804) 786-1648 or email at duc.truong@sbsd.virginia.gov.

To obtain the most up-to-date information on the SWaM Certification guidance documents visit the agency's website at http://www.sbsd.virginia.gov.

Guidance Document:

SWaM Certification Program Updates (11/20/08)

AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision - Compliance with the General Requirements of § 110(a)(2) of the federal Clean Air Act

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to assure necessary authorities are contained in the state implementation plan (SIP) concerning visibility elements supporting the infrastructure requirements of the federal Clean Air Act (Act). The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia SIP in accordance with the requirements of § 110(a) of the Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comment on the issue of whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to general state plan infrastructure for controlling the interstate transport of air pollution.

Public comment period: 30-day comment forum - June 15, 2015, through July 15, 2015.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name and address of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposed revision consists of a demonstration of compliance with the general requirements of § 110(a)(2) of the federal Clean Air Act for interstate transport as it relates to regional haze and sulfur dioxide (SO_2).

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All information received is part of the public record.

To review proposal: The proposal and supporting documents are available on the DEQ Air Public Notices for Plans website at http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.aspx. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) DEQ Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070,

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 676-4800,

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (434) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, or email doris.mcleod@deq.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

May 20, 2015

Administrative Letter 2015-10

To: All Insurers and Other Interested Parties

Re: Insurance-Related Legislation Enacted by the 2015 Virginia General Assembly

We have attached for your reference summaries of certain insurance-related statutes enacted or amended and re-enacted during the 2015 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2015, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that

appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills referred to in this letter may be obtained at http://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=lnk&val=55 or via the links we have provided in the summary headings. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2015 Session. Each person or organization is responsible for review of relevant statutes.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

Chapter 9 (Senate Bill 697) and Chapter 443 (House Bill 1357)

§§ 38.2-231, 38.2-2113, and 38.2-2208. Commercial liability, homeowners, and automobile insurance policies; notices. Authorizes insurers to send certain notices, including nonrenewal and cancellation notices, pertaining to commercial liability, homeowners, or motor vehicle insurance policies by any first-class mail tracking method used or approved by the United States Postal Service (USPS), in addition to the registered and certified mail options. Insurers should note that the certain methods of delivery previously permitted by statute are no longer permissible methods of delivery, including "certificates of mailing" and "certificates of bulk mailing."

Chapter 11 (Senate Bill 729)

§ 38.2-3730. Credit life and credit accident and sickness insurance; reports. Removes the requirement that insurers file annual reports regarding credit life and credit accident and sickness insurance with the Commission. There is no change in the requirement for the information to be filed with the National Association of Insurance Commissioners.

Chapter 14 (Senate Bill 748)

§§ 38.2-4214, 38.2-4319, 38.2-4408, and 38.2-4509. Insurance plans; hypothecation of assets. Applies provisions regulating the hypothecation of assets that currently apply to most insurers to health services plans, health maintenance organizations, and insurers offering dental or optometric services plans. The bill requires insurers to maintain a certain amount of free and unencumbered admitted assets and to report to the Commission certain information regarding transactions encumbering assets.

Chapter 32 (Senate Bill 1227) and Chapter 115 (House Bill 2063)

§§ 38.2-3418.16 and 54.1-3303. Telemedicine services; prescriptions. Amends the definition of "telemedicine services" to encompass the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating a patient or consulting with other health care providers regarding a patient's diagnosis or treatment.

Chapter 334 (House Bill 1742)

§ 38.2-1884. Self-storage unit insurance. Removes the per-customer dollar limit on the amount of incidental compensation an employee or representative of a lessor of self-storage units may receive in connection with the sale of self-storage insurance. Currently, such compensation is limited to $10 per customer who purchases such coverage for a self-storage unit.

Chapter 515 (House Bill 1942) and Chapter 516 (Senate Bill 1262)

§ 38.2-3407.15:2. Health insurance plans and programs; preauthorization for drug benefits. Requires provider contracts under which an insurance carrier or its intermediary has the right or obligation to require preauthorization for a drug benefit to include specific provisions governing the preauthorization process.

Chapter 518 (House Bill 2031)

§ 38.2-3407.15:2. Health insurance; updating maximum allowable cost pricing lists. Requires any contract between a health insurance carrier and its intermediary, pursuant to which the intermediary has the right or obligation to establish a maximum allowable cost, and any provider contract between a carrier and a participating pharmacy provider or its contracting agent, pursuant to which the carrier has the right or obligation to establish a maximum allowable cost, to contain specific provisions that require the intermediary or carrier to update the maximum allowable cost list, and verify the availability of the drugs on such list. Such contracts are also required to contain provisions that require the intermediary or carrier to provide a process for an appeal, investigation, and resolution of disputes regarding maximum allowable cost drug pricing.

Chapter 584 (Senate Bill 1190) and Chapter 585 (House Bill 1819)

§§ 38.2-2206 and 8.01-66.1:1. Motor vehicle liability insurance; underinsured motorist claims; settlement procedures; subrogation. Establishes a procedure by which an injured person or personal representative may settle a claim with a liability insurer or insurers and the liability insurer's or insurers' insured for the available limits of the liability insurer's coverage without prejudice to any underinsured motorist benefits or claim. Upon payment of the liability

insurer's available limits, the liability insurer has no further duties to its insured and the underinsured motorist benefits insurer shall have no right of subrogation or claim against the underinsured motorist. The provisions of the bill apply to policies issued or renewed on or after January 1, 2016.

Chapter 619 (House Bill 2357)

§ 38.2-1906. Insurance rates; policies transferred pursuant to agent book transfer. Clarifies that an insurer may cap the renewal rates for policies that have been transferred by an agent from one insurer to another insurer pursuant to an agent book transfer, to the same extent that such rates may be capped for policyholders whose coverage is continued by that insurer.

Chapter 649 (House Bill 1747)

§§ 38.2-3412.1, 38.2-3418.17, 38.2-4300, 38.2-4319, and 38.2-5800. Health insurance; mental health parity. Conforms certain requirements regarding coverage for mental health and substance use disorders to provisions of the federal Mental Health Parity and Addiction Equity Act of 2008 (the Act). The bill requires that group and individual health insurance coverage provide mental health and substance use disorder benefits. Such benefits shall be in parity with the medical and surgical benefits contained in the coverage in accordance with the Act, even where those requirements would not otherwise apply directly. The measure requires the Bureau of Insurance to develop reporting requirements regarding denied claims, complaints, and appeals involving such coverage and to compile the information into an annual report.

Chapter 650 (House Bill 1940)

§ 38.2-3418.17. Health insurance; mandated coverage for autism spectrum disorder. Requires health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis and treatment of autism spectrum disorder in individuals from age two through age ten. Currently, such coverage is required to be provided for individuals from age two through age six. The provision applies with respect to insurance policies, subscription contracts, and health care plans delivered, issued for delivery, reissued, or extended on or after January 1, 2016. The measure does not apply to policies, contracts, or plans issued in the individual market or the small group market, which effective January 1, 2016, will include employers with no more than 100 employees

Chapter 723 (House Bill 1444) Effective 1/1/2016

§§ 38.2-3407.19, 38.2-4214, 38.2-4319, and 38.2-4509. Vision care plans; reimbursement for services. Prohibits a participating provider agreement between a vision care plan carrier and an optometrist or ophthalmologist from establishing the fee or rate that the optometrist or ophthalmologist is required to accept for the provision of health care materials or services, or from requiring that an optometrist or ophthalmologist accept the reimbursement paid by the vision care plan carrier as payment in full, unless the services or materials are covered services or covered materials under the applicable vision care plan. Reimbursements by a vision care plan carrier are required to be reasonable, which is defined as the negotiated fee or rate that is set forth in the participating provider agreement and is acceptable to the provider. Vision care plans shall not require an optometrist or ophthalmologist to use a particular optical laboratory, manufacturer of eyeglass frames or contact lenses, or third-party supplier as a condition of participation in a vision care plan. Changes to a participating provider agreement shall be submitted in writing to the optometrist or ophthalmologist at least 30 days prior to their effective date. Provisions of this measure that relate to covered materials also apply to licensed opticians practicing in the Commonwealth. The bill has a delayed effective date of January 1, 2016.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Environmental Permit - Fort Belvoir

Purpose of notice: To seek public comments on a draft permit from the Virginia Department of Environmental Quality (DEQ) for a facility to manage hazardous waste as well as two statement of basis (SB) regarding proposed remedies for site-wide corrective action, located on the Fort Belvoir facility in Fort Belvoir, Virginia.

Public comment period: May 21, 2015, through July 6, 2015.

Permit name & number: Hazardous Waste Management Permit for Storage and Corrective Action; EPA ID No. VA7213720082

Permit applicant: U.S. Army Garrison Fort Belvoir (Fort Belvoir)

Facility name & location: U.S. Route 1, Fort Belvoir, VA 22060-5116

Project description: Fort Belvoir applied for a renewal permit to operate a facility that manages hazardous waste on April 21, 2014. One hazardous waste management unit (HWMU) is permitted, known as HWMU 1490, which is Building 1490 that stores hazardous waste in containers. The permit also includes RCRA site-wide corrective action activities, where Fort Belvoir may be required to submit various plans, studies, and reports in accordance with a Project Management Plan and Schedule Requirements approved by DEQ and the U.S. Environmental Protection Agency (EPA) Region 3. DEQ has prepared an SB dated October 20, 2014, on its proposed final remedies for 192 solid waste management units (SWMUs), which include either No Further Action, No Further Action with Administrative Closure, or Land Use Controls, and a second SB dated October 31, 2014, on its proposed final remedies for five SWMUs designated as A-05, A-08, A-09, A-11, and A-12, that have completed corrective measures

studies located on the Fort Belvoir facility. The draft permit will allow the facility to continue to operate Building 1490, the hazardous waste storage facility, and implement RCRA site-wide corrective action activities.

How to comment: DEQ accepts comments by hand delivery, email, fax, or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. The public may also write to the contact person at the address below to be added to the facility mailing list. The public also may request a public hearing. To request a public hearing, the request must be in writing, must state the nature of the issues proposed to be raised in the hearing, and must be made within the public comment period. The public may review the draft permit, fact sheet, and application at the Kingstowne Library, 6500 Landsdowne Centre Drive, Alexandria, VA 22315 or at the Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193. Copies of the permit documents are also available at the Department of Environmental Quality, Office of Waste Permitting, 629 East Main Street, Richmond, VA 23219.

Contact for public comments, document requests, and additional information: Angela J. Alonso, Environmental Specialist II, Department of Environmental Quality, Office of Waste Permitting & Compliance, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4328, FAX (804) 698-4234, or email angela.alonso@deq.virginia.gov.

DEPARTMENT OF FORENSIC SCIENCE

Approved Breath Alcohol Testing Devices

This list of approved breath alcohol testing devices replaces the list published in the Virginia Register (29:2 VA.R. 334) on September 24, 2012.

Statutory Authority: §§ 9.1-1101, 18.2-267, and 18.2-268.9 of the Code of Virginia.

In accordance with 6VAC40-20-90 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, the following breath test device is approved for use in conducting breath tests:

The Intox EC/IR II with the Virginia test protocol, manufactured by Intoximeters, Inc., St. Louis, Missouri, utilizing an external printer.

In accordance with 6VAC40-20-100 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, for evidential breath test devices, mouthpieces that are compatible with the specific testing device are approved as supplies for use in conducting breath tests on approved breath test devices.

In accordance with 6VAC40-20-180 of the Regulations for Breath Alcohol Testing and under the authority of the Code of Virginia, the following devices are approved for use as preliminary breath test devices:

1. The ALCO-SENSOR, ALCO-SENSOR II, ALCOSENSOR III, ALCO-SENSOR IV, ALCO-SENSOR VXL, and ALCOSENSOR FST manufactured by Intoximeters, Inc., St. Louis, Missouri.

2. The CMI SD 2 and INTOXILYZER 400PA, manufactured by Lion Laboratories, Barry, United Kingdom.

3. The CMI SD 5 and INTOXILYZER 500 manufactured by CMI, Inc., Owensboro, Kentucky.

4. The LIFELOC PBA 3000*, LIFELOC FC10, LIFELOC FC10Plus and LIFELOC FC20, manufactured by Lifeloc Inc., Wheat Ridge, Colorado. *When used in the direct sensing mode only.

5. The ALCOTEST 5510, ALCOTEST 6510, ALCOTEST 6810 and ALCOTEST 6820 manufactured by Draeger Safety Diagnostics, Inc., Durango, Colorado.

6. The ALCOVISOR JUPITER, ALCOVISOR MERCURY and MARK V, manufactured by PAS Systems International, Inc., Fredericksburg, Virginia.

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

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

2015 Medicaid Reimbursement Changes - Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Act (42 USC 1396a(a)(13)))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Amount, Duration, and Scope of Medical and Remedial Care Services (12VAC30-50); Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (12VAC30-70); Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80); and Methods and Standards for Establishing Payment Rates for Long Term Care (12VAC30-90).

DMAS is making these changes in its methods and standards for setting payment rates for services in order to comply with the legislative mandates set forth in the Chapter 665, Item 301 of the 2015 Acts of Assembly.

Reimbursement Changes Affecting Hospitals (12VAC30-70)

12VAC30-70-351 is being amended to eliminate inflation for inpatient hospital operating, GME, DSH, and IME payments, effective July 1, 2015.

The expected decrease in annual aggregate expenditures is ($36,849,416).

Reimbursement Changes Affecting Other Providers (12VAC30-80)

12VAC30-80-30 is being amended to:

1. Eliminate the emergency room payment reduction for level III physician services for nonemergencies effective July 1, 2015.

The expected increase in annual aggregate expenditures is $4,460,000.

2. Increase supplemental payments for physicians affiliated with freestanding children's hospitals with more than 50% Virginia Medicaid inpatient utilization effective July 1, 2015.

The expected increase in annual aggregate expenditures is $2,763,460.

3. Update the average commercial rate calculation of supplemental payments for physicians affiliated with a publicly funded medical school in Tidewater effective October 1, 2015.

The expected increase in annual aggregate expenditures is $100,000.

4. Establish supplemental payment for state clinics operated by the Virginia Department of Health (VDH) effective July 1, 2015.

The expected increase in annual aggregate expenditures is $300,000.

Reimbursement Changes Affecting Nursing Facilities (12VAC30-90)

12VAC30-90 is being amended to:

1. Eliminate inflation for nursing facilities, effective July 1, 2015.

The expected decrease in annual aggregate expenditures is ($27,204,097).

2. Implement the "hold harmless provision" for nursing facilities that meet the bed capacity and occupancy requirements, reimbursing with the price-based operating rate rather than the transition operating rate for those facilities. This change will be effective July 1, 2015.

The expected increase in annual aggregate expenditures is $320,122.

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (http://townhall.virginia.gov). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: Emily McClellan, Regulatory Manager, Department of Medical Assistance Services, Division of Policy and Research, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Windswept Development, LLC

A consent order has been proposed for Windswept Development, LLC for violations at Aston Phase II and Westerleigh. The consent order seeks to resolve violations of State Water Control Law and the Virginia Water Protection Permit Program. The consent order describes a settlement to resolve these violations. The proposed consent order is available online at www.deq.virginia.gov. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from June 15, 2015, through July 15, 2015.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; *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 http://www.virginia.gov/connect/commonwealth-calendar.

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.