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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

Members of the Virginia Code Commission: John S. Edwards, Chair; James A. Leftwich, Jr., Vice-Chair; Ward L. Armstrong; Nicole Cheuk; Richard E. Gardiner; Ryan T. McDougle; Christopher R. Nolen; Steven Popps; Charles S. Sharp; Malfourd W. Trumbo; Amigo R. Wade; Wren M. Williams.

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

PUBLICATION SCHEDULE AND DEADLINES

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

June 2023 through June 2024

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
39:21	May 17, 2023	June 5, 2023
39:22	May 31, 2023	June 19, 2023
39:23	June 14, 2023	July 3, 2023
39:24	June 28, 2023	July 17, 2023
39:25	July 12, 2023	July 31, 2023
39:26	July 26, 2023	August 14, 2023
40:1	August 9, 2023	August 28, 2023
40:2	August 23, 2023	September 11, 2023
40:3	September 6, 2023	September 25, 2023
40:4	September 20, 2023	October 9, 2023
40:5	October 4, 2023	October 23, 2023
40:6	October 18, 2023	November 6, 2023
40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 (Tuesday)	December 4, 2023
40:9	November 29, 2023	December 18, 2023
40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024
40:14	February 7, 2024	February 26, 2024
40:15	February 21, 2024	March 11, 2024
40:16	March 6, 2024	March 25, 2024
40:17	March 20, 2024	April 8, 2024
40:18	April 3, 2024	April 22, 2024
40:19	April 17, 2024	May 6, 2024
40:20	May 1, 2024	May 20, 2024
40:21	May 15, 2024	June 3, 2024
40:22	May 29, 2024	June 17, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-570, Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings**, and determined that this regulation should be amended. The board is publishing its report of findings dated March 7, 2023, to support this decision.

The General Assembly has charged the board with the responsibility to adopt, promulgate, and enforce regulations necessary to protect health and safety as it relates to establishing minimum requirements for adequate sewerage facilities at all marinas, other places where boats are moored, and boating access facilities. The regulation was reviewed, and it was determined to be essential to protecting public health. The regulation meets the criteria set forth in Executive Order 19 (2022). The regulation is necessary to interpret and apply the requirements imposed by the board and is clearly written and understandable.

The regulation has not undergone a comprehensive revision since 2015, therefore the board recommends amending the regulation to address certain sections that prohibit the permitting of marinas by local health departments. Under the current regulatory scheme, applicants must submit their application to the local health department that in turn must submit the application to the Office of Environmental Health Services. This creates a bifurcated system of inspection and program administration that is inefficient to staff and applicants. This amendment is intended to simplify the application process for industry, improve the administration and enforcement of marina standards, and reduce administrative burden to regulators.

The continued need for the regulation is established and required by § 32.1-246 of the Code of Virginia. No comments were received during the periodic reviews public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with any federal, state law, or regulation. The regulation has not undergone an evaluation to assess changes in technology, economic conditions, or other factors since 2015. Amending the regulation will minimize the economic impact on small businesses because it will simplify the permitting process for regulated entities.

Contact Information: Lance Gregory, Division Director, Virginia Department of Health, James Madison Building, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7491.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **18VAC41-11, Public Participation Guidelines; 18VAC41-20, Barbering and Cosmetology Regulations; 18VAC41-50, Tattooing Regulations; 18VAC41-60, Body-Piercing Regulations; and 18VAC41-70, Esthetics Regulations.** The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins May 22, 2023, and ends June 12, 2023.

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

Contact Information: Kelley Smith, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review **22VAC40-35, Virginia Independence Program and 22VAC40-295, Temporary Assistance for Needy Families (TANF).** The review of each regulation will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review is to determine whether each regulation should

Periodic Reviews and Small Business Impact Reviews

be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins May 22, 2023, and ends June 12, 2023.

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

Contact Information: Mark Golden, Temporary Assistance for Needy Families Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7385.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-201, Permanency Services - Prevention, Foster Care, Adoption and Independent Living**, and determined that this regulation should be amended. The board is publishing its report of findings dated April 19, 2023, to support this decision.

This regulation governs the administration of foster care and adoption services. This authority is essential in order to protect the safety and welfare of children, their families, foster parents, and adoptive parents. The regulation is clearly written and easily understandable.

The regulation should be amended. The need for technical amendments was identified during the review. The public comments received will be considered.

There were no complaints and only one comment received from the public concerning this regulation during the public comment period. The one comment dealt solely with technical amendments and did not have any economic impact on small businesses. This regulation does not conflict with federal or state law or regulations, and there are no requirements that exceed applicable federal requirements. This regulation was last amended in 2022. There are no impacts on small businesses, as the regulation does not include any language that prescribes limitations or requirements on small businesses.

Contact Information: Lora Smith Hughes, Foster Care Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 997-1397.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-411, General Relief Program**, and determined that this regulation should be amended. The board is publishing its report of findings dated April 19, 2023, to support this decision.

This regulation governs the administration of general relief assistance. This authority is essential in order to protect public health, safety, and welfare. Amendments are needed to ensure that the regulation clearly articulates application and eligibility for those who seek the assistance.

This regulation should be amended. It was determined that the regulation omits critical information for the General Relief Program, including necessary information on the application process, the determination of eligibility, the amount of benefits, and the appeal process.

There were no complaints and no comments received from the public concerning this regulation during the public comment period. This regulation does not conflict with federal or state law or regulations, and there are no requirements that exceed applicable federal requirements, as general relief assistance is a state and local program. This regulation was last amended in 2013. The regulation was reviewed as part of a periodic review in 2018 and amendments were necessary, but the regulatory action was withdrawn in 2022. There are no impacts on small businesses, as the regulation does not include any language that prescribes limitations or requirements on small businesses.

Contact Information: Mark Golden, Temporary Assistance for Needy Families Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7385.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-910, General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Record**, and determined that this regulation should be amended. The board is publishing its report of findings dated April 19, 2023, to support this decision.

The current regulation protects the confidentiality of client records gathered from public assistance, child enforcement, and social services program. Therefore, the regulation is necessary to protect public welfare of citizens receiving these

Periodic Reviews and Small Business Impact Reviews

services. With some exceptions noted, this regulation requires consent from **the** client for disclosure of any personal information.

The agency recommends amending **the** regulation to clarify terms and definitions in 22VAC40-910-10, so **the** terms and definitions are consistent with **the** Code of Virginia and other regulations. There are no impacts on small businesses as this regulation does not pertain to small businesses.

Contact Information: Gail Jennings, Senior Research Associate, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 615-4000.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Withdrawal of Notice of Intended Regulatory Action

Title of Regulation: **12VAC5-590. Waterworks Regulations (amending 12VAC5-590-35).**

Statutory Authority: §§ 32.1-12 and 32.1-170 of **the** Code of Virginia.

Notice is hereby given that **the** State Board of Health has WITHDRAWN **the** Notice of Intended Regulatory Action for **12VAC5-590, Waterworks Regulations**, that was published in **38:13 VA.R. 1533 February 14, 2022**. This action was initiated in response to a work group formed pursuant to Chapters 611 and 1097 of **the** 2020 Acts of Assembly. Since **the** NOIRA for this action was published, Chapter 585 of **the** 2022 Acts of Assembly added further amendments to § 32.1-169 of **the** Code of Virginia, and **the** U.S. Environmental Protection Agency (EPA) announced **the** proposed National Primary Drinking Water Regulation for six perfluorinated and polyfluorinated substances. After **the** EPA's proposed regulation is finalized, **the** State Board of Health will initiate a regulatory action to adopt consistent regulations for **the** Commonwealth in conformance with Chapters 611, 1097, and 585. Therefore, this NOIRA is withdrawn.

Agency Contact: Tony Singh, Deputy Office Director, Office of Drinking Water, Virginia Department of Health, 109 Governor Street, 6th Floor, Richmond, VA 23219, telephone (804) 310-3927, FAX (804) 864-7521, or email tony.singh@vdh.virginia.gov.

VA.R. Doc. No. R22-7068; Filed April 21, 2023, 8:35 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Withdrawal of Notice of Intended Regulatory Action

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of **the** Code of Virginia.

Notice is hereby given that **the** Board for Contractors has WITHDRAWN **the** Notice of Intended Regulatory Action for **18VAC50-30, Individual License and Certification Regulations**, that was published in **39:7 VA.R. 992 November 21, 2022**. **The** purpose of **the** proposed action was to exempt all individuals who have successfully completed an apprenticeship program approved by **the** U.S. Department of Labor or **the** Virginia Department of Labor and Industry from **the** requirement to sit for **the** applicable examination in order

to obtain a journeyman license issued by **the** Board for Contractors. On March 14, 2023, **the** Board for Contractors voted to withdraw this action and refile it as an exempt action. Section 54.1-1131 of **the** Code of Virginia provides an examination exemption for individuals applying for a tradesman license that have completed an apprenticeship program approved by **the** Commissioner of Labor and Industry. As a result, **the** regulation is more restrictive than **the** statute and must be amended; therefore, **the** notice is withdrawn.

Agency Contact: Marjorie King, Administrator, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, TDD (804) 527-4290, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R23-6923; Filed May 1, 2023, 1:34 p.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of **the** Code of Virginia that **the** Board of Optometry intends to consider amending **18VAC105-20, Regulations of the Virginia Board of Optometry**. **The** proposed action is required by Chapters 16 and 17 of **the** 2022 Acts of Assembly. **The** board must amend existing regulation to provide certification for optometrists to perform laser surgery. **The** regulation must include provisions for (i) promotion of patient safety; (ii) identification and categorization of procedures for **the** purpose of issuing certificates; (iii) establishment of an application process for certification to perform such procedures; (iv) establishment of minimum education, training, and experience requirements for certification to perform such procedures; (v) development of protocols for proctoring and criteria for requiring such proctoring; and (vi) implementation of a quality assurance review process for such procedures performed by certificate holders.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of **the** Code of Virginia.

Public Comment Deadline: June 21, 2023.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R23-7555; Filed April 25, 2023, 5:55 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Withdrawal of Notice of Intended Regulatory Action

Title of Regulation: 22VAC40-325. **Fraud Reduction/Elimination Effort (amending 22VAC40-325-20).**

Statutory Authority: §§ 63.2-217 and 63.2-526 of **the** Code of Virginia.

Notice is hereby given that **the** State Board of Social Services has WITHDRAWN **the** Notice of Intended Regulatory Action for **22VAC40-325, Fraud Reduction/Elimination Effort**, that was published in **37:14 V.A.R. 1466 March 1, 2021**. **The** purpose of **the** proposed action was to rename **the** Fraud Reduction/Elimination Effort to **the** Statewide Fraud Control Program and change **the** methodology for reimbursement to local departments of social services for fraud control activities. Due to **the** considerable time since **the** NOIRA was published, **the** agency is withdrawing **the** NOIRA. A periodic review of 22VAC40-325 is scheduled for 2023, which will provide an opportunity for updated public comment and determination of whether amendments are still needed.

Agency Contact: Susan Lloyd, Fraud Consultant, Department of Social Services, 1604 Santa Rosa Road, Henrico, VA 23229, telephone (804) 663-5526, or email susan.lloyd@dss.virginia.gov.

VA.R. Doc. No. R21-5880; Filed April 27, 2023, 3:41 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (amending 9VAC25-151-10, 9VAC25-151-15, 9VAC25-151-40 through 9VAC25-151-80, 9VAC25-151-90, 9VAC25-151-110, 9VAC25-151-130 through 9VAC25-151-160, 9VAC25-151-180 through 9VAC25-151-220, 9VAC25-151-240, 9VAC25-151-320, 9VAC25-151-340, 9VAC25-151-350, 9VAC25-151-370; adding 9VAC25-151-85, 9VAC25-151-400).

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

Public Hearing Information:

June 26, 2023 - 1 p.m. - Department of Environmental Quality, Piedmont Regional Office Training Room, 4949-A Cox Road, Glen Allen, VA 23060

Public Comment Deadline: July 21, 2023.

Agency Contact: Joseph Bryan, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2659, FAX (804) 698-4178, or email joseph.bryan@deq.virginia.gov.

Background: This proposed action amends and reissues the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151), which expires on June 30, 2024. The existing general permit regulation establishes limitations, monitoring requirements, and other special conditions for point source discharges of stormwater associated with industrial activity to surface waters in order to maintain surface water quality.

Summary:

Proposed amendments to the general permit regulation include (i) removing the definition for "measurable storm event" and updating this term in the regulation with "storm event discharges"; (ii) revising the date to indicate that incorporated references are based on the Code of Federal Regulations published as of July 1, 2022; (iii) revising the term of the general permit regulation to July 1, 2024, through June 30, 2029; (iv) adding firefighting training activities managed in a manner to avoid an instream impact as an authorized non-stormwater discharge in accordance with § 9.1-207.1 of the Code of Virginia and clarifying that routine external building washdown must be managed in a manner to avoid instream impact; (v) clarifying that facilities subject to 40 CFR 449 (discharges from primary airport deicing operations) may be covered under Sector AD of the permit; (vi) adding the following requirements to registration statements: include a description of the primary industrial activity and all other industrial activities onsite; identify the SIC codes or Industrial Activity Codes for each individual outfall; and identify outfalls that collect runoff from mulch dyeing operations; (vii) clarifying that a new municipal separate storm sewer system notification does not need to be made with each re-registration under the general permit; (viii) removing a statement regarding deicing operations not being authorized under the permit; (ix) adding that once the electronic reporting date is established for this industry, registration statements shall be submitted electronically following a three-month notice by the department; (x) updating benchmarks in accordance with U.S. Environmental Protection Agency (EPA) 2021 Multi-Sector General Permit (MSGP), the Virginia Water Quality Standards, and the recommendations of the technical advisory committee (TAC); (xi) clarifying that facilities subject to 40 CFR 449 (discharges from primary airport deicing operations) may be covered under Sector AD of the permit; (xii) clarifying total maximum daily load (TMDL) conditions are only applicable if the TMDLs are

approved by EPA prior to **the** term of **the** permit; (xiii) clarifying that sampling data collected during **the** 2019 industrial stormwater general permit term may be used to satisfy all or part of any TMDL monitoring requirements; (xiv) adding language requiring facilities exceeding a TMDL wasteload allocation to prepare and submit a pollutant minimization plan upon notification from **the** department; (xv) removing a requirement to report **the** duration in hours of storm events; (xvi) clarifying that **the** immediate reports required by Part II G, H, and I of **the** general permit shall be made to **the** department's regional office, updating **the** link to **the** online Pollution Response Preparedness portal, and requiring that **the** online portal shall be used for reports outside of normal working hours; (xvii) adding an Airport Deicing Operations condition to make it clear that they are covered by this general permit and providing some control measure options for consideration; (xviii) clarifying that copies of **the** stormwater pollution prevention plan (SWPPP) retained onsite may be either in hard copy or in electronic format; (xix) updating sector-specific benchmark monitoring parameters in accordance with **the** EPA 2021 MSGP, **the** Virginia Water Quality Standards, and **the** recommendations of **the** TAC; and (xx) moving **the** entirety of **the** Chesapeake Bay TMDL conditions to a new Part V (9VAC25-151-400) to simplify **the** general permit and changing **the** Chesapeake Bay TMDL conditions as follows: make **the** monitoring frequency quarterly; remove total suspended solids requirements; separate requirements into three distinct categories depending on **the** status of a facility's demonstration of compliance with **the** Chesapeake Bay TMDL nutrient loading rates; require reductions for existing facilities under **the** 2019 permit be achieved by December 31, 2025; require reductions for existing facilities that obtain initial coverage under **the** 2024 permit be achieved two years following **the** fourth quarterly monitoring period; allow facilities to use applicable sampling data collected during **the** 2019 permit term to satisfy all or part of their monitoring requirement; and allow alternative calculations to be proposed on a case-by-case basis to address facilities with outfalls that rarely discharge.

9VAC25-151-10. Definitions.

The words and terms used in this chapter shall have **the** meanings defined in **the** State Water Control Law (§ 62.1-44.2 et seq. of **the** Code of Virginia) and **the** VPDES Permit Regulation (9VAC25-31) unless **the** context clearly indicates shows otherwise, except that for **the** purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices, prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce **the** discharge of pollutants to surface waters.

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

"Closed landfill" means a landfill that, on a permanent basis, will no longer receive waste and has completed closure in accordance with applicable federal, state, or local requirements.

"Coal pile runoff" means **the** rainfall runoff from or through any coal storage pile.

"Colocated industrial activity" means any industrial activity, excluding **the** facility's primary industrial activity, located on-site that meets **the** description of a category included in **the** "industrial activity" definition. An activity at a facility is not considered colocated if **the** activity, when considered separately, does not meet **the** description of a category included in **the** "industrial activity" definition or identified by **the** Standard Industrial Classification (SIC) code list in Table 50-2 in 9VAC25-151-50.

"Commercial treatment and disposal facilities" means facilities that receive, on a commercial basis, any produced hazardous waste (not their own) and treat or dispose of those wastes as a service to **the** generators. ~~Such~~ **The** facilities treating or disposing exclusively residential hazardous wastes are not included in this definition.

"Control measure" means any best management practice or other method (including effluent limitations) used to prevent or reduce **the** discharge of pollutants to surface waters.

"Corrective action" means any action to (i) repair, modify, or replace any stormwater control used at **the** facility; (ii) clean up and properly dispose of spills, releases, or other deposits at **the** facility; or (iii) return to compliance with permit requirements.

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

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

"Existing discharger" means an operator applying for coverage under this permit for discharges authorized previously under a VPDES general or individual permit.

"Impaired water" means, for purposes of this chapter, a water that has been identified by Virginia pursuant to § 303(d) of **the** Clean Water Act as not meeting applicable water quality standards (these waters are called "water quality limited segments" under 40 CFR 30.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

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

"Industrial activity" - **the** following categories of facilities are considered to be engaging in "industrial activity":

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

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

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting **the** definition of a reclamation area under 40 CFR 434.11(l) because **the** performance bond issued to **the** facility by **the** appropriate Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of noncoal mining operations ~~which that~~ have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on **the** site of ~~such the~~ operations (inactive mining operations are mining sites that are not being actively mined, but ~~which~~ have an identifiable owner or operator; inactive mining sites do not include sites where mining claims are being maintained ~~prior to before~~ disturbances associated with **the** extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for **the** sole purpose of maintaining a mining claim);

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

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

6. Facilities involved in **the** recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and

automobile junkyards, including ~~but limited to~~ those classified as Standard Industrial Classification Codes 5015 and 5093 (OMB SIC Manual, 1987);

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

8. Transportation facilities classified as SIC Codes 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) ~~which that~~ have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of **the** facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or ~~which that~~ are otherwise identified under categories 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in **the** storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to **the** disposal of sewage sludge that is located within **the** confines of **the** facility, with a design flow of 1.0 MGD or more, or required to have an approved publicly owned treatment works (POTW) pretreatment program under 9VAC25-31. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and ~~which that~~ are not physically located in **the** confines of **the** facility, or areas that are in compliance with 9VAC25-31-420 through ~~9VAC25-31-720~~ 9VAC25-31-720; and

10. Facilities under SIC Codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987).

"Industrial stormwater" means stormwater runoff from industrial activity.

"Land application unit" means an area where wastes are applied onto or incorporated into **the** soil surface (excluding manure spreading operations) for treatment or disposal.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

~~"Measurable storm event" means a storm event that results in a discharge from an outfall.~~

"Minimize" means reduce or eliminate to **the** extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, **district**, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law ~~such as (e.g., a sewer **district**, flood control **district** or drainage **district**, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act that discharges to surface waters of the state);~~ (ii) designed or used for collecting or conveying stormwater; (iii) ~~which that~~ is not a combined sewer; and (iv) ~~which that~~ is not part of a POTW.

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff.

"Primary industrial activity" includes any activities performed on-site that are:

1. Identified by **the** facility's primary SIC code; or
2. Included in **the** narrative descriptions of **the** definition of "industrial activity."

Narrative descriptions in **the** "industrial activity" definition include: category 1 activities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; category 4 hazardous waste treatment storage or disposal facilities, including those that are operating under interim status or a permit under subtitle C of **the** Resource Conservation and Recovery Act (RCRA); category 5 landfills, land application sites, and open dumps that receive or have received industrial wastes; category 7 steam electric power generating facilities; and category 9 sewage treatment works with a design flow of 1.0 mgd or more.

For colocated activities covered by multiple SIC codes, **the** primary industrial determination should be based on **the** value of receipts or revenues, or, if ~~such~~ **the** information is not available for a particular facility, **the** number of employees or production rate for each process may be compared. **The** operation that generates **the** most revenue or employs **the** most ~~personnel staff~~ is **the** operation in which **the** facility is primarily engaged. In situations where **the** vast majority of on-site activity falls within one SIC code, that activity may be **the** primary industrial activity.

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

"Significant materials" includes raw materials; fuels; materials ~~such as (e.g., solvents, detergents, and plastic pellets);~~ finished materials ~~such as (e.g., metallic products);~~

raw materials used in food processing or production; hazardous substances designated under § 101(14) of **the** Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical **the** facility is required to report pursuant to **the** Emergency Planning and Community Right-to-Know Act (EPCRA) § 313; fertilizers; pesticides; and waste products ~~such as (e.g., ashes, slag and sludge)~~ that have **the** potential to be released with stormwater discharges.

"Significant spills" includes releases of oil or hazardous substances in excess of reportable quantities under § 311 of **the** Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of CERCLA (see 40 CFR 302.4).

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

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

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

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"SWPPP" means stormwater pollution prevention plan.

"Total maximum daily load" or "TMDL" means a calculation of **the** maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to **the** pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background, and must include a margin of safety (MOS) and account for seasonal variations.

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by **the** department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). **The** program is based on **the** use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

"Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

9VAC25-151-15. Applicability of incorporated references based on **the dates that they became effective.**

Except as noted, when a regulation of **the** U.S. Environmental Protection Agency set forth in Title 40 CFR is referenced and incorporated herein into this chapter, that regulation shall be as it exists and has been published as of July 1, ~~2018~~ 2022.

9VAC25-151-40. Effective date of **the permit.**

This general permit will become effective on July 1, ~~2019~~ 2024. This general permit will expire on June 30, ~~2024~~ 2029.

9VAC25-151-50. Authorization to discharge.

A. To be eligible to discharge under this permit, an owner must (i) have a stormwater discharge associated with industrial activity from **the** facility's primary industrial activity, as defined in 9VAC25-151-10 (Definitions), provided **the** primary industrial activity is included in Table 50-2 of this section; or (ii) be notified that discharges from **the** facility have been designated by **the board department** for permitting under **the** provisions of 9VAC25-31-120 A 1 c, or under 9VAC25-31-120 A 7 a (1) or (2) of **the** VPDES Permit Regulation, and are eligible for coverage under Sector AD of this permit.

Any owner governed by this general permit is hereby authorized to discharge stormwater associated with industrial activity, as defined in this chapter, to surface waters of **the** Commonwealth of Virginia provided that:

1. **The** owner submits a registration statement in accordance with 9VAC25-151-60, and that registration statement is accepted by **the board department**;
2. **The** owner submits **the** required permit fee;

3. **The** owner complies with **the** applicable requirements of 9VAC25-151-70 et seq.; and

4. **The board department** has not notified **the** owner that **the** discharge is ineligible for coverage in accordance with subsection B of this section.

B. **The board department** will notify an owner that **the** discharge is not eligible for coverage under this general permit in **the** event of any of **the** following:

1. **The** owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of **the** VPDES Permit Regulation;
2. **The** owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;
3. **The** discharge violates or would violate **the** antidegradation policy in **the** Water Quality Standards at 9VAC25-260-30; or
4. **The** discharge is not consistent with **the** assumptions and requirements of an approved TMDL. Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010) states that wasteloads for future growth for new facilities in **the** Chesapeake Bay watershed with industrial stormwater discharges cannot exceed **the** nutrient and sediment loadings that were discharged ~~prior to~~ before **the** land being developed for **the** new industrial activity. For purposes of this permit regulation, facilities that ~~commence~~ begin construction after June 30, ~~2019~~ 2024, must be consistent with this requirement to be eligible for coverage under this general permit.

C. Additional conditions.

1. Facilities with colocated industrial activities on-site shall comply with all applicable effluent limitations, monitoring, and SWPPP requirements of each section of 9VAC25-151-70 et seq. in which a colocated industrial activity is described.
2. Stormwater discharges associated with industrial activity that are mixed with other discharges (~~both~~ i.e., stormwater and nonstormwater) requiring a VPDES permit are authorized by this permit, provided that **the** owner obtains coverage under this VPDES general permit for **the** industrial activity discharges, and a VPDES general or individual permit for **the** other discharges. **The** owner shall comply with **the** terms and requirements of each permit ~~obtained~~ that authorizes any component of **the** discharge.
3. **The** stormwater discharges authorized by this permit may be combined with other sources of stormwater ~~which that~~ are not required to be covered under a VPDES permit, so long as **the** combined discharge is in compliance with this permit.
4. Authorized nonstormwater discharges. **The** following "nonstormwater" discharges are authorized by this permit:

- a. Discharges from emergency firefighting activities or firefighting training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of the Code of Virginia;
- b. Fire hydrant flushing, managed in a manner to avoid an instream impact;
- c. Potable water, including water line flushing, managed in a manner to avoid an instream impact;
- d. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;
- e. Irrigation drainage;
- f. Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
- g. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed). Pavement wash waters shall be managed in a manner to avoid an instream impact;
- h. Routine external building washdown that does not use detergents or hazardous cleaning products and is managed in a manner to avoid an instream impact;
- i. Uncontaminated groundwater or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials; and
- k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

5. Stormwater discharges associated with construction activity that are regulated under a VPDES permit are not authorized by this permit.

6. Discharges subject to stormwater effluent limitation guidelines under 40 CFR Subchapter N (Effluent Guidelines and Standards). ~~Only those stormwater discharges subject to stormwater effluent limitation guidelines under 40 CFR Subchapter N that are only eligible for coverage under this permit if they are identified in Table 50-1 of this subsection are eligible for coverage under this permit.~~

TABLE 50 - 1 STORMWATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES.	
Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C (established February 20, 1974))	E

Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 (established November 19, 1982))	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429 Subpart I (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A (established July 24, 1975))	D
Runoff from landfills (40 CFR Part 445 Subparts A and B (established January 19, 2000))	K and L
Discharges from airport deicing operations (40 CFR Part 449 (established May 16, 2012))	Facilities subject to <u>the</u> effluent limitation guidelines in 40 CFR Part 449 are not authorized under this permit <u>may be covered under Sector AD.</u>

7. Permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity summarized in Table 50-2 of this subsection. These sector descriptions are based on Standard Industrial Classification (SIC) Codes and Industrial Activity Codes. References to "sectors" in this permit refer to these groupings.

TABLE 50 - 2 SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT	
SIC Code or Activity Code	Activity Represented
Sector A: Timber Products	
2411	Log Storage and Handling (wet deck storage areas are only authorized if no chemical additives are used in <u>the</u> spray water or applied to <u>the</u> logs).
2421	General Sawmills and Planing Mills.
2426	Hardwood Dimension and Flooring Mills.

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2429	Special Product Sawmills, Not Elsewhere Classified.
2431-2439 (except 2434 - see Sector W)	Millwork, Veneer, Plywood, and Structural Wood.
2441, 2448, 2449	Wood Containers.
2451, 2452	Wood Buildings and Mobile Homes.
2491	Wood Preserving.
2493	Reconstituted Wood Products.
2499	Wood Products, Not Elsewhere Classified (includes SIC Code 24991303 - Wood, Mulch and Bark facilities).
Sector B: Paper and Allied Products	
2631	Paperboard Mills.
Sector C: Chemical and Allied Products	
2812-2819	Industrial Inorganic Chemicals.
2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Synthetic Fibers, except Glass.
2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
2873-2879	Agricultural Chemicals (includes SIC Code 2875 - Composting Facilities).
Sector D: Asphalt Paving and Roofing Materials and Lubricants	
2951, 2952	Asphalt Paving and Roofing Materials.
2992, 2999	Miscellaneous Products of Petroleum and Coal.
Sector E: Glass Clay, Cement, Concrete, and Gypsum Products	
3251-3259	Structural Clay Products.
3261-3269	Pottery and Related Products.
3274, 3275	Concrete, Gypsum and Plaster Products, Except: Concrete Block and Brick; Concrete Products, except Block and Brick; and Ready-Mixed Concrete Facilities (SIC Codes 3271-3273).

Sector F: Primary Metals	
3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
3321-3325	Iron and Steel Foundries.
3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals.
3363-3369	Nonferrous Foundries (Castings).
Sector G: Metal Mining (Ore Mining and Dressing)	
1011	Iron Ores.
1021	Copper Ores.
1031	Lead and Zinc Ores.
1041, 1044	Gold and Silver Ores.
1061	Ferroalloy Ores, except Vanadium.
1081	Metal Mining Services.
1094, 1099	Miscellaneous Metal Ores.
Sector H: Coal Mines and Coal Mining Related Facilities	
1221-1241	Coal Mines and Coal Mining-Related Facilities.
Sector J: Mineral Mining and Dressing Facilities (SIC Codes 1411-1499 are not authorized under this permit)	
Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities	
HZ	Hazardous Waste Treatment Storage or Disposal.
Sector L: Landfills and Land Application Sites	
LF	Landfills, Land Application Sites, and Open Dumps.
Sector M: Automobile Salvage Yards	
5015	Automobile Salvage Yards.
Sector N: Scrap Recycling Facilities	
5093	Scrap Recycling Facilities.
4499 (limited to list)	Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships for Scrap.
Sector O: Steam Electric Generating Facilities	
SE	Steam Electric Generating Facilities.
Sector Q: Water Transportation and Ship and Boat Building or Repairing Yards.	

4412-4499 (except 4499 facilities as specified in Sector N)	Water Transportation.
3731, 3732	Ship and Boat Building or Repairing Yards.
Sector U: Food and Kindred Products	
2021-2026	Dairy Products.
2041-2048	Grain Mill Products.
2074-2079	Fats and Oils.
Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	
3011	Tires and Inner Tubes.
3021	Rubber and Plastics Footwear.
3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
Sector AA: Fabricated Metal Products	
3411-3471, 3482-3499	Fabricated Metal Products, except Machinery and Transportation Equipment.
3479	Fabricated Metal Coating and Engraving.
3911-3915	Jewelry, Silverware, and Plated Ware.
Sector AB: Industrial or Commercial Machinery	
3511-3599 (except 3571-3579)	Industrial and Commercial Machinery (except Computer and Office Equipment).
Sector AD: Nonclassified Facilities/Stormwater Discharges Designated by <u>the Board Department</u> as Requiring Permits	
N/A	Stormwater Discharges Designated by <u>the Board Department</u> for Permitting under <u>the</u> Provisions of 9VAC25-31-120 A 1, or under 9VAC25-31-120 A 7 a (1) or (2) of <u>the</u> VPDES Permit Regulation. Facilities may not elect to be covered under Sector AD. Only <u>the board department</u> may assign a facility to Sector AD.

Sector AE: Facilities with No Analytical Benchmark Monitoring Requirements	
2611	Pulp Mills.
2621	Paper Mills.
2652-2657	Paperboard Containers and Boxes.
2671-2679	Converted Paper and Paperboard Products, except Containers and Boxes.
2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; In Vitro and In Vivo Diagnostic Substances; Biological Products, except Diagnostic Substances.
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
2861-2869	Industrial Organic Chemicals.
2891-2899	Miscellaneous Chemical Products.
3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's paints, and Artist's Watercolors.
3211	Flat Glass.
3221, 3229	Glass and Glassware, Pressed or Blown.
3231	Glass Products Made of Purchased Glass.
3241	Hydraulic Cement.
3281	Cut Stone and Stone Products.
3291-3299	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products.
3331-3339	Primary Smelting and Refining of Nonferrous Metals.
3398, 3399	Miscellaneous Primary Metal Products.
3341	Secondary Smelting and refining of Nonferrous Metals.
1311	Crude Petroleum and Natural Gas.
1321	Natural Gas Liquids.

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1381-1389	Oil and Gas Field Services.
2911	Petroleum Refineries.
4512-4581	Air Transportation Facilities.
TW	Treatment Works.
2011-2015	Meat Products.
2032-2038	Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties.
2051-2053	Bakery Products.
2061-2068	Sugar and Confectionary Products.
2082-2087	Beverages.
2091-2099	Miscellaneous Food Preparations Kindred Products.
2111-2141	Tobacco Products.
2211-2299	Textile Mill Products.
2311-2399	Apparel and Other Finished Products Made from Fabrics and Similar Materials.
3131-3199	Leather and Leather Products, except Leather Tanning and Finishing.
2434	Wood Kitchen Cabinets.
2511-2599	Furniture and Fixtures.
2711-2796	Printing, Publishing, and Allied Products.
3081-3089	Miscellaneous Plastics Products.
3931	Musical Instruments.
3942-3949	Dolls, Toys, Games, and Sporting and Athletic Goods.
3951-3955 (except 3952)	Pens, Pencils, and Other Artist's Materials.
3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, except Precious Metal.
3991-3999	Miscellaneous Manufacturing Industries.
3111	Leather Tanning, Currying, and Finishing.

3711-3799 (except 3731, 3732 – see Sector Q)	Transportation Equipment, except Ship and Boat Building and Repairing.
3571-3579	Computer and Office Equipment.
3612-3699	Electronic and Other Electrical Equipment and Components, except Computer Equipment.
3812-3873	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks.
Sector AF: Facilities Limited to Total Suspended Solids Benchmark Monitoring Requirements	
4011, 4013	Railroad Transportation.
4111-4173	Local and Highway Passenger Transportation.
4212-4231	Motor Freight Transportation and Warehousing.
4311	United State Postal Service.
5171	Petroleum Bulk Stations and Terminals.

D. Conditional exclusion for no exposure. Any owner covered by this permit who becomes eligible for a no exposure exclusion from permitting under 9VAC25-31-120 E may file a no exposure certification. ~~Upon~~ On submission and acceptance by ~~the board department~~ of a complete and accurate no exposure certification, ~~the~~ permit requirements no longer apply, and ~~the~~ owner is not required to submit a notice of termination. A no exposure certification must be submitted to ~~the board department~~ once every five years.

E. Compliance with this general permit constitutes compliance with ~~the~~ federal Clean Water Act and ~~the~~ State Water Control Law, with ~~the~~ exceptions stated in 9VAC25-31-60 of ~~the~~ VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of ~~the~~ responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

F. Continuation of permit coverage.

1. Permit coverage shall expire at ~~the~~ end of its term. However, expiring permit coverages are automatically continued if ~~the~~ owner has submitted a complete registration statement at least 60 days ~~prior to before~~ ~~the~~ expiration date of ~~the~~ permit or a later submittal date established by ~~the board department~~, which cannot extend beyond ~~the~~ expiration date of ~~the~~ original permit. ~~The~~ permittee is authorized to continue to discharge until ~~such time as~~ ~~the board department~~ either:

- a. Issues coverage to the owner under this general permit; or
 - b. Notifies the owner that the discharge is not eligible for coverage under this general permit.
2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board department may choose to do any or all of the following:
- a. Initiate enforcement action based ~~upon~~ on the general permit coverage that has been continued;
 - b. Issue a notice of intent to deny coverage under the amended general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit coverage or be subject to enforcement action for discharging without a permit;
 - c. Issue an individual permit with appropriate conditions; or
 - d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-151-60. Registration statement and stormwater pollution prevention plan (SWPPP).

A. An owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES general permit regulation for discharges of stormwater associated with industrial activity.

Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, ~~2014~~ 2019, and that intends to continue coverage under this general permit shall review and update the stormwater pollution prevention plan (SWPPP) to meet all provisions of the general permit (9VAC25-151-70 et seq.) within 90 days of the board department granting coverage under this permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit ~~who that~~ wish to obtain coverage under this general permit shall prepare and implement a written SWPPP for the facility in accordance with the general permit (9VAC25-151-70 et seq.) ~~prior to~~ before submitting the registration statement.

B. Deadlines for submitting registration statements.

1. Existing facilities.

- a. Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, ~~2014~~ 2019, and that intends to continue coverage under this general permit shall submit a complete registration statement to the board department on or before May 2, ~~2019~~ 1, 2024.

- b. Any owner covered by a VPDES individual permit for stormwater discharges associated with industrial activity that is proposing to be covered under this general permit shall submit a complete registration statement at least 240 days ~~prior to~~ before the expiration date of the VPDES individual permit.

- c. Any owner of an existing facility with stormwater discharges associated with industrial activity, not currently covered by a VPDES permit, that is proposing to be covered under this general permit shall submit a complete registration statement to the board department.

2. New facilities. Any owner proposing a new discharge of stormwater associated with industrial activity shall submit a complete registration statement at least 60 days ~~prior to~~ before the date planned for the commencement beginning of the industrial activity at the facility.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall submit a complete registration statement within 30 days of the ownership change.

4. Late registration statements. Registration statements for existing facilities covered under subdivision 1 a of this subsection will be accepted after June 30, ~~2019~~ 2024, but authorization to discharge will not be retroactive. Owners described in subdivision 1 a of this subsection that submit registration statements after May 2, ~~2019~~ 1, 2024, are authorized to discharge under the provisions of 9VAC25-151-50 F (Continuation of permit coverage) if a complete registration statement is submitted before July 1, ~~2019~~ 2024.

- C. The required registration statement shall contain the following information:

- 1. Facility name and mailing address, owner name and mailing address, telephone number, and email address;
- 2. Facility street address (if different from mailing address) or location (if the facility location does not have a mailing address);
- 3. Facility operator (local contact) name, address, telephone number, and email address (if available) if different than owner;
- 4. The nature of the business conducted at the facility to be covered under this general permit, including a description of the primary industrial activity and all other industrial activities that take place;
- 5. The receiving waters of the industrial activity discharges;
- 6. A determination of whether the facility will discharge to an MS4. If the facility discharges to an MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge information at the time of registration under this permit and include that notification with the registration

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statement. The notice shall include the following information: the name of the facility, a contact person and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number (if assigned by DEQ);

7. The permit number for any existing VPDES permit assigned to the facility;

8. Indicate An indication that a an SWPPP has been prepared prior to before submitting this registration statement by the owner of a new facility, a facility previously covered by an expiring individual permit, or an existing facility not currently covered by a VPDES permit;

~~9. Whether or not this facility will discharge stormwater runoff from coal storage piles;~~

~~10. Identification~~ 9. For each outfall, identification of up to four four-digit Standard Industrial Classification (SIC) Codes or ~~2-letter~~ two-letter Industrial Activity Codes that best represent the principal products or services rendered by the facility and major colocated industrial activities (~~2-letter~~ two-letter Industrial Activity Codes are: HZ – hazardous waste treatment, storage, or disposal facilities; LF – landfills and disposal facilities that receive or have received any industrial wastes; SE – steam electric power generating facilities; or TW – treatment works treating domestic sewage);

~~11. 10.~~ Identification of all applicable industrial sectors in this permit (as designated in Table 50-2) that cover the industrial activities at the facility, and major colocated industrial activities to be covered under this permit, and the stormwater outfalls associated with each industrial sector.

a. If the facility is a landfill (sector L), indicate state the type of landfill (i.e., MSWLF (municipal solid waste landfill), CDD (construction debris and demolition), or other), and which outfalls (if any) receive contaminated stormwater runoff;

b. If the facility is a timber products operation (sector A), indicate state which outfalls (if any) receive discharges from wet decking areas, and which outfalls (if any) collect runoff from areas where mulch dyeing operations (including loading, transporting, and storage) occur;

c. For all facilities, indicate state any outfalls receiving discharges from coal storage piles;

d. If the facility manufactures asphalt paving and roofing materials (sector D), indicate state which outfalls (if any) receive discharges from areas where production of asphalt paving emulsions or roofing emulsions occurs;

e. If the facility manufactures cement (sector E), indicate state which outfalls (if any) receive discharges from material storage piles;

f. If a scrap recycling and waste recycling facility (sector N - SIC 5093) only receives source-separated recyclable

materials, indicate state which outfalls (if any) receive discharges from this activity. List the metals (if any) that are received; or

g. For primary airports, list the average deicing season and indicate state which outfalls (if any) receive discharges from deicing of non-propeller aircraft, and the annual average departures of non-propeller aircraft. It should be noted that airport facilities subject to the effluent limitation guidelines in 40 CFR Part 449 are not authorized under this permit or anti-icing operations;

~~12. 11.~~ List the following facility area information:

a. The total area of the facility in acres;

b. The total area of industrial activity of the facility in acres;

c. The total impervious surface area of the industrial activity of the facility in acres;

d. The impervious and total areas in acres draining to each industrial activity outfall at the facility. Outfalls shall be numbered using a unique numerical identification code for each outfall. For example: Outfall Number 001, or Outfall Number 002, etc.; and

e. The latitude and longitude of each outfall location;

~~13. 12.~~ A site map depicting the following shall be included with the registration statement:

a. The property boundaries;

b. All industrial activity outfalls labeled with unique numerical identification for each outfall. Outfall numbering shall be the same as that used for the facility area information in subdivision ~~12~~ 11 of this subsection; and

c. All water bodies or MS4 conveyances, labeled with names if applicable, receiving stormwater discharges from the site;

~~14. 13.~~ Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010) states that wasteloads for future growth for new facilities in the Chesapeake Bay watershed with industrial stormwater discharges cannot exceed the nutrient and sediment loadings that were discharged prior to before the land being was developed for the industrial activity. For purposes of this permit regulation, facilities that commence begin construction after June 30, ~~2019~~ 2024, must be consistent with this requirement to be eligible for coverage under this general permit.

If this is a new facility that commenced began construction after June 30, ~~2019~~ 2024, in the Chesapeake Bay watershed, and is applying for first time general permit coverage, attach documentation to the registration statement to demonstrate:

a. That the total phosphorus load does not exceed the greater of (i) the total phosphorus load that was discharged from the industrial area of the property prior to before the

land ~~being~~ was developed for ~~the~~ new industrial activity, or (ii) 0.41 pounds per acre per year (VSMP water quality design criteria). ~~The~~ documentation must include ~~the~~ measures and controls that were employed to meet this requirement, along with ~~the~~ supporting calculations. ~~The~~ owner may include additional nonindustrial land on ~~the~~ site as part of any plan to comply with ~~the~~ no net increase requirement. Consistent with ~~the~~ definition of "site," this includes adjacent land used in connection with ~~the~~ facility. Compliance with ~~the~~ water quality design criteria may be determined utilizing ~~the~~ Virginia Runoff Reduction Method or another equivalent methodology approved by ~~the~~ ~~board~~ department. Design specifications and pollutant removal efficiencies for specific BMPs can be found on ~~the~~ Virginia Stormwater BMP Clearinghouse website at <http://www.vwrrc.vt.edu/swc>; or

b. ~~The~~ owner may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of ~~the~~ Code of Virginia, governing trading and offsetting, to meet ~~the~~ no net increase requirement;

~~15-~~ 14. State Corporation Commission entity identification number if ~~the~~ facility is required to obtain an entity identification number by law; and

~~16-~~ 15. ~~The~~ following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate ~~the~~ information submitted. Based on my inquiry of ~~the~~ person or persons who manage ~~the~~ system, or those persons directly responsible for gathering ~~the~~ information, ~~the~~ information submitted is, to ~~the~~ best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including ~~the~~ possibility of fine and imprisonment for knowing violations."

D. ~~The~~ registration statement shall be signed in accordance with 9VAC25-31-110 A.

E. Where to submit. ~~The~~ registration statement may be delivered to ~~the~~ department by either postal or electronic mail and shall be submitted to ~~the~~ DEQ regional office serving ~~the~~ area where ~~the~~ industrial facility is located. Following notification from ~~the~~ department of ~~the~~ start date for ~~the~~ required electronic submission of Notices of Intent to Discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to ~~the~~ department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between ~~the~~ notification from ~~the~~ department and ~~the~~ date after which such forms must be submitted electronically.

9VAC25-151-70. General permit.

Any owner whose registration statement is accepted by ~~the~~ director will receive ~~the~~ following general permit and shall comply with ~~the~~ requirements therein and be subject to ~~the~~ VPDES Permit Regulation, 9VAC25-31. Facilities with colocated industrial activities shall comply with all applicable monitoring and SWPPP requirements of each industrial activity sector of this chapter in which a colocated industrial activity is described. All pages of 9VAC25-151-70 and 9VAC25-151-80 apply to all stormwater discharges associated with industrial activity covered under this general permit. Not all pages of 9VAC25-151-90 et seq. will apply to every permittee. ~~The~~ determination of which pages apply will be based on an evaluation of ~~the~~ regulated activities located at ~~the~~ facility.

General Permit No.: VAR05

Effective Date: July 1, ~~2019~~ 2024

Expiration Date: June 30, ~~2024~~ 2029

VPDES GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

AUTHORIZATION TO DISCHARGE UNDER ~~THE~~ VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND ~~THE~~ VIRGINIA STATE WATER CONTROL LAW

In compliance with ~~the~~ provisions of ~~the~~ Clean Water Act, as amended, and pursuant to ~~the~~ State Water Control Law and regulations adopted pursuant thereto, owners of facilities with stormwater discharges associated with industrial activity are authorized to discharge to surface waters within ~~the~~ boundaries of ~~the~~ Commonwealth of Virginia, except those waters specifically named in board regulation that prohibit such discharges.

~~The~~ authorized discharge shall be in accordance with this cover page, ~~the~~ registration statement, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-Conditions Applicable to All VPDES Permits, Part III-Stormwater Pollution Prevention Plan, ~~and~~ Part IV-Sector-Specific Permit Requirements, and Part V-Chesapeake Bay Total Maximum Daily Load Compliance as set forth in this general permit.

Part I

~~Effluent Limitations, Monitoring Requirements and Special Conditions~~

A. Effluent limitations and monitoring requirements.

There are four individual and separate categories of monitoring requirements that a facility may be subject to under this permit: (i) quarterly visual monitoring; (ii) benchmark monitoring of discharges associated with specific industrial activities; (iii) compliance monitoring for discharges subject to numerical effluent limitations; and (iv) monitoring of

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discharges to impaired waters, both those with an approved TMDL and those without an approved TMDL. The monitoring requirements and numeric effluent limitations applicable to a facility depend on the types of industrial activities generating stormwater runoff from the facility, and for TMDL monitoring, the location of the facility's discharge or discharges. Part IV of the permit (9VAC25-151-90 et seq.) identifies monitoring requirements applicable to specific sectors of industrial activity. The permittee shall review Part I A 1 and Part IV of the permit to determine which monitoring requirements and numeric limitations apply to his the permittee's facility. Unless otherwise specified, limitations and monitoring requirements under Part I A 1 and Part IV are additive.

Sector-specific monitoring requirements and limitations are applied discharge by discharge at facilities with colocated activities. Where stormwater from the colocated activities are commingled, the monitoring requirements and limitations are additive. Where more than one numeric limitation for a specific parameter applies to a discharge, compliance with the more restrictive limitation is required. Where benchmark, numerical effluent limitations, or TMDL monitoring requirements for a monitoring period overlap, the permittee may use a single sample to satisfy monitoring requirements.

1. Types of monitoring requirements and limitations.
- a. Quarterly visual monitoring. The requirements and procedures for quarterly visual monitoring are applicable to all facilities covered under this permit, regardless of the facility's sector of industrial activity.

(1) The permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall, except discharges exempted in Part I A 3 or Part I A 4. The visual examinations shall be made at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. The visual examination shall be made during normal working hours, where practicable, and when considerations for safety and feasibility allow. If no storm event resulted in runoff from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred. The documentation shall be signed and certified in accordance with Part II K of this permit.

(2) Samples shall be collected in accordance with Part I A 2. Sample examination shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. The visual examination of the sample shall be conducted in a well-lit area. No analytical tests are required to be performed on the samples.

(3) The visual examination reports documentation shall be maintained on-site with the SWPPP. The report documentation shall include the outfall location, the examination date and time, examination personnel staff, the nature of the discharge (i.e., runoff or snow melt), visual quality of the stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution), and probable sources of any observed stormwater contamination.

b. Benchmark monitoring of discharges associated with specific industrial activities.

Table 70-1 identifies the specific industrial sectors subject to the benchmark monitoring requirements of this permit and the industry-specific pollutants of concern. The permittee shall refer to the tables found in the individual sectors in Part IV (9VAC25-151-90 et seq.) for benchmark monitoring concentration values. Colocated industrial activities at the facility that are described in more than one sector in Part IV shall comply with all applicable benchmark monitoring requirements from each sector. The results of benchmark monitoring are primarily for the permittee to use to determine the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values, included in Part IV of this permit, are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate show that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in a routine facility inspection. In addition, exceedance of benchmark concentrations may identify facilities that would be more appropriately covered under an individual, or alternative general permit where more specific pollution prevention controls could be required.

TABLE 70-1 INDUSTRIAL SECTORS SUBJECT TO BENCHMARK MONITORING		
Industry Sector ¹	SIC Code or Activity Code	Benchmark Monitoring Parameters
A	2421	TSS.
	2491	Arsenic, Chromium, Copper.
	2411	TSS.

	2426	TSS.
	2499 (24991303)	COD, TSS.
	2499 (Mulch Dyeing)	BOD, TSS, COD, Aluminum, Arsenic, Cadmium, Chromium, Copper, Iron , Selenium, Silver, Zinc, Total N, Total P.
B	2631	BOD.
C	2812-2819	Aluminum, Iron, Total N.
	2821-2824	Zinc.
	2841-2844	Total N, Zinc.
	2873-2879	Total N, Iron , Zinc, Total P.
	2875 (Composting Facilities)	TSS, BOD, COD, Ammonia, Total N, Total P.
D	2951, 2952	TSS.
E	3251-3259, 3261-3269	Aluminum.
	3274, 3275	TSS, pH, Iron .
F	3312-3317	Aluminum, Zinc.
	3321-3325	Aluminum, TSS, Copper, Iron , Zinc.
	3351-3357	Copper, Zinc.
	3363-3369	Copper, Zinc.
G ²	1021	TSS.
H	1221-1241	TSS, Aluminum, Iron .
K	HZ (Hazardous Waste Treatment, Storage, or Disposal)	TKN, TSS, TOC, Arsenic, Cadmium, Cyanide, Lead, Magnesium , Mercury, Selenium, Silver.
L	LF (Landfills, Land Application Sites, and Open Dumps)	TSS.
M	5015	TSS, Aluminum, Iron , Lead.
N	5093	Copper, Aluminum, Iron , Lead, Zinc, TSS, Cadmium, Chromium.
	4499	Aluminum, Cadmium, Chromium, Copper, Iron , Lead, Zinc, TSS.
O	SE (Steam Electric Generating Facilities)	Iron Facilities in Sector O are not subject to benchmark requirements.
Q	4412-4499 (except 4499 facilities as specified in Sector N)	TSS, Copper, Zinc.
	3731, 3732	TSS, Copper, Zinc.
U	2021-2026	BOD, TSS.
	2041-2048	TSS, TKN.
	2074-2079	BOD, Total N, TSS.

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Y	3011-3069	Zinc.
AA	3411-3471, 3482-3499, 3911-3915	Iron , Aluminum, Copper, Zinc.
	3479	Zinc.
AB	3511-3599 (except 3571-3579)	TSS, TPH, Copper, Zinc.
AD	Nonclassified Facilities/Stormwater Discharges Designated by <u>the Board department</u> as Requiring Permits	As determined by <u>the</u> director.
AE	2611, 2621, 2652-2657, 2671-2679, 2833-2836, 2851, 2861-2869, 2891-2899, 3952, 3211, 3221, 3229, 3231, 3241, 3281, 3291-3299, 3331-3339, 3398, 3399, 3341, 1311, 1321, 1381-1389, 2911, 4512-4581, (TW) Treatment Works, 2011-2015, 2032-2038, 2051-2053, 2061-2068, 2082-2087, 2091-2099, 2111-2141, 2211-2299, 2311-2399, 3131-3199, 2434, 2511-2599, 2711-2796, 3081-3089, 3931, 3942-3949, 3951-3955 (except 3952), 3961, 3965, 3991-3999, 3111, 3711-3799 (except 3731, 3732 see Sector Q), 3571-3579, 3612-3699, 3812-3873	Facilities in Sector AE are not subject to benchmark monitoring requirements.
AF	4011, 4013, 4111-4173, 4212-4231, 4311, 5171	TSS.

¹Table does not include parameters for compliance monitoring under effluent limitations guidelines.

²See Sector G (Part IV G) for additional monitoring discharges from waste rock and overburden piles from active ore mining or dressing facilities, inactive ore mining or dressing facilities, and sites undergoing reclamation.

(1) Benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector ~~or sectors~~ applicable to a facility's discharge. Monitoring shall be performed at least once during each of the first four, and potentially all, monitoring periods after coverage under the permit begins. Monitoring ~~commences~~ begins with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

~~Depending on the results of four consecutive monitoring periods, benchmark monitoring may not be required to be conducted in subsequent monitoring periods (see Part I A 1-b(2)).~~

(2) Benchmark monitoring waivers for facilities testing below benchmark concentration values. Waivers from benchmark monitoring are available to facilities whose discharges are below benchmark concentration values on an outfall by outfall basis. Sector-specific benchmark monitoring is not required to be conducted in subsequent monitoring periods during the term of this permit provided:

(a) Samples were collected in four consecutive monitoring periods, and the average of the four samples for all parameters at the outfall is below the applicable benchmark concentration value in Part IV. Facilities that were covered under the 2014 2019 industrial stormwater general permit may use sampling data from the last two

monitoring periods of that permit and the first two monitoring periods of this permit to satisfy the four consecutive monitoring periods requirement;

(b) The facility is not subject to a numeric effluent limitation established in Part I A 1 c (1) (stormwater effluent limitations), Part I A 1 c (2) (coal pile runoff), or Part IV (Sector Specific Permit Requirements) for any of the parameters at that outfall; and

(c) A waiver request is submitted to and approved by the board department. The waiver request shall be sent to the appropriate DEQ regional office, along with the supporting monitoring data for four consecutive monitoring periods, and a certification that, based on current potential pollutant sources and control measures used, discharges from the facility are reasonably expected to be ~~essentially the same (or cleaner)~~ substantially similar or cleaner compared to when the benchmark monitoring for the four consecutive monitoring periods was done.

Waiver requests will be evaluated by the board department based ~~upon~~ on (i) benchmark monitoring results below the benchmark concentration values; (ii) a favorable compliance history (including inspection results); and (iii) no outstanding enforcement actions.

The monitoring waiver may be revoked by the board department for cause. The permittee will be notified in writing that the monitoring waiver is revoked, and that the

benchmark monitoring requirements are again in force and will remain in effect until **the** permit's expiration date.

(3) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C and retained in accordance with Part II B.

c. Compliance monitoring for discharges subject to numerical effluent limitations or discharges to impaired waters.

(1) Facilities subject to stormwater effluent limitation guidelines.

(a) Facilities subject to stormwater effluent limitation guidelines (see Table 70-2) are required to monitor **such the** discharges to evaluate compliance with numerical effluent limitations. Industry-specific numerical limitations and compliance monitoring requirements are described in Part IV of **the** permit (9VAC25-151-90 et seq.). Permittees with colocated industrial activities at **the** facility that are described in more than one sector in Part IV shall comply on a discharge-by-discharge basis with all applicable effluent limitations from each sector.

(b) Permittees shall monitor **the** discharges for **the** presence of **the** pollutant subject to **the** effluent limitation at least once during each of **the** monitoring periods after coverage under **the** permit begins. Monitoring **commences begins** with **the** first full monitoring period after **the** owner is granted coverage under **the** permit. Monitoring periods are specified in Part I A 2. **The** substantially identical outfall monitoring provisions (Part I A 2 f) are not available for numeric effluent limits monitoring.

(c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

TABLE 70-2 STORMWATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES	
Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C (established February 20, 1974))	E
Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 (established November 19, 1982))	O

Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429, Subpart I (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A (established July 24, 1975))	D
Runoff from landfills (40 CFR Part 445, Subpart A and B (established January 19, 2000))	K and L
Discharges from airport deicing operations (40 CFR Part 449 (established May 16, 2012))	Facilities subject to the effluent limitation guidelines in 40 CFR Part 449 are not authorized under this permit may be covered under Sector AD.

(2) Facilities subject to coal pile runoff monitoring.

(a) Facilities with discharges of stormwater from coal storage piles shall comply with **the** limitations and monitoring requirements of Table 70-3 for all discharges containing **the** coal pile runoff, regardless of **the** facility's sector of industrial activity.

(b) Permittees shall monitor **such the** stormwater discharges at least once during each of **the** monitoring periods after coverage under **the** permit begins. Monitoring **commences begins** with **the** first full monitoring period after **the** owner is granted coverage under **the** permit. Monitoring periods are specified in Part I A 2. **The** substantially identical outfall monitoring provisions (Part I A 2 f) are not available for coal pile numeric effluent limits monitoring.

(c) **The** coal pile runoff shall not be diluted with other stormwater or other flows **in order** to meet this limitation.

(d) If a facility is designed, constructed, and operated to treat **the** volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from **the** treatment unit is not subject to **the** 50 mg/L limitation for total suspended solids.

(e) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

TABLE 70-3 NUMERIC LIMITATIONS FOR COAL PILE RUNOFF			
Parameter	Limit	Monitoring Frequency	Sample Type
Total Suspended Solids (TSS)	50 mg/l, max.	1/6 months	Grab
pH	6.0 min. - 9.0 max.	1/6 months	Grab

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(3) Facilities discharging to an impaired water with an approved TMDL wasteload allocation. Owners of facilities that are a source of the specified pollutant of concern to waters for which a TMDL wasteload allocation has been approved ~~prior to~~ by the U.S. Environmental Protection Agency (EPA) before the term of this permit will be notified ~~as such~~ by the department when they are approved for coverage under the general permit.

(a) Upon written notification from the department, ~~facilities permittees shall monitor the discharges for the pollutant subject to TMDL wasteload allocations shall be required to monitor such discharges to evaluate compliance with the TMDL requirements.~~ (b) ~~Permittees shall monitor the discharges for the pollutant subject to the TMDL wasteload allocation once every six months after coverage under the permit begins, unless otherwise another sampling frequency is determined by the department for polychlorinated biphenyls (PCBs). Monitoring commences begins with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.~~

(~~e~~) (b) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

(~~d~~) (c) If the pollutant subject to the TMDL wasteload allocation is below the quantitation level in all of the samples from the first four monitoring periods (~~i.e., the first two years of coverage under the permit~~), the permittee may request to the ~~board~~ department in writing that further sampling be discontinued, unless the TMDL has specific instructions to the contrary (in which case those instructions shall be followed). The laboratory certificate of analysis shall be submitted with the request. If approved, documentation of this shall be kept with the SWPPP.

If the pollutant subject to the TMDL wasteload allocation is above the quantitation level in any of the samples from the first four monitoring periods, the permittee shall continue the scheduled TMDL monitoring throughout the term of the permit. Applicable sampling data collected during the 2019 industrial stormwater general permit term may be used to satisfy all or part of the four monitoring periods requirement.

(d) Upon written notification from the department, facilities exceeding the TMDL wasteload allocation shall prepare and submit a pollutant minimization plan (PMP) designed to investigate the location and potential reduction of sources in the facility's stormwater discharges. The PMP shall be developed and submitted to the department for approval within 180 days of the receipt of notification from the department. The PMP shall include the following items, as appropriate:

(i) Facility contact for the contents of the PMP and any activities associated with the PMP;

(ii) A proposed implementation schedule for minimization activities and prospective milestones;

(iii) Proposed actions for known or probable sources;

(iv) Proposed action to find and control unknown sources;

(v) A summary of any previous minimization activities; and

(vi) Information on continuing assessment of progress, which may include establishment of criteria to evaluate whether the location and potential reduction of sources have been addressed.

(4) Facilities discharging to an impaired water without an approved TMDL wasteload allocation. Owners of facilities that discharge to waters listed as impaired in the 2016 2022 Final 305(b)/303(d) Water Quality Assessment Integrated Report, and for which a TMDL wasteload allocation has not been approved ~~prior to~~ before the term of this permit, will be notified ~~as such~~ by the department when they are approved for coverage under the general permit.

(a) Upon written notification from the department, ~~facilities discharging to an impaired water without an approved TMDL wasteload allocation shall be required to monitor such discharges for the pollutants that caused the impairment.~~

(b) ~~Permittees~~ permittees shall monitor the discharges for all pollutants for which the waterbody is impaired, and for which a standard analytical method exists, at least once ~~during each of the monitoring periods~~ every six months after coverage under the permit begins, ~~unless otherwise determined by the department for polychlorinated biphenyls (PCBs).~~ Monitoring ~~commences begins~~ with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

(~~e~~) (b) If the pollutant for which the waterbody is impaired is suspended solids, turbidity, or sediment, or sedimentation, monitor for total suspended solids (TSS). If the pollutant for which the waterbody is impaired is expressed in the form of an indicator or surrogate pollutant, monitor for that indicator or surrogate pollutant. No monitoring is required when a waterbody's biological communities are impaired but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or temperature. Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

(~~d~~) (c) If the pollutant for which the water is impaired is below the quantitation level in the discharges from the

facility, or it is above the quantitation level but its presence is caused solely by natural background sources, the permittee may request to the board department in writing that further impaired water monitoring be discontinued. The laboratory certificate of analysis shall be submitted with the request. If approved, documentation of this shall be kept with the SWPPP.

To support a determination that the pollutant's presence is caused solely by natural background sources, the following documentation shall be submitted with the request and kept with the SWPPP: (i) an explanation of why it is believed that the presence of the impairment pollutant in the facility's discharge is not related to the activities at the facility; and (ii) data or studies that tie the presence of the impairment pollutant in the facility's discharge to natural background sources in the watershed. Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity at the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.

2. Monitoring instructions.

a. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part II A.

b. When and how to sample. A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in a discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring shall be performed at a time when a measurable discharge occurs at the site. For discharges from a stormwater management structure, the monitoring shall be performed at a time when a measurable discharge occurs from the structure.

The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of the discharge, provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information shall be submitted in the department's electronic discharge monitoring report (e-DMR) system, and maintained with the SWPPP. If the sampled discharge commingles with process or nonprocess water, the permittee shall attempt to sample the stormwater discharge before it mixes with the nonstormwater.

c. Storm event data. For each monitoring event (except snowmelt monitoring), along with the monitoring results, the permittee shall identify the date and duration (in hours) of the storm events event sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the duration interval between the storm event sampled and the end of the previous measurable storm event discharge. For snowmelt monitoring, the permittee shall identify the date of the sampling event.

d. Monitoring periods.

(1) Quarterly visual monitoring. The quarterly visual examinations shall be made at least once in each of the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.

(2) Benchmark monitoring, effluent limitation monitoring, and impaired waters monitoring (for waters both with and without an approved TMDL). Monitoring shall be conducted at least once in each of the following semiannual periods each year of permit coverage: January through June, and July through December.

e. Documentation explaining a facility's inability to obtain a sample (including dates and times the outfalls were viewed or sampling was attempted), of no rain event, or of deviation from the "measurable" storm event requirements shall be 72-hour storm interval shall be submitted with the e-DMR and maintained with the SWPPP. Acceptable documentation includes National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

f. Representative outfalls - substantially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and stormwater management practices occurring within the drainage areas of the outfalls, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may conduct monitoring on the effluent of just one of the outfalls and report that the observations also apply to the substantially identical outfall or outfalls. The substantially identical outfall monitoring provisions apply to quarterly visual monitoring, benchmark monitoring, and impaired waters monitoring (both those with and without an approved TMDL). The substantially identical outfall monitoring provisions are not available for numeric effluent limits monitoring. The permittee shall include the following information in the SWPPP:

(1) The locations of the outfalls;

(2) An evaluation, including available monitoring data, indicating the outfalls are expected to discharge

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substantially identical effluents, including evaluation of monitoring data where available; and

(3) An estimate of the size of each outfall's drainage area in acres.

3. Adverse climatic conditions waiver. When adverse weather conditions prevent the collection of samples, a substitute sample may be taken during a qualifying storm event in the next monitoring period. Adverse weather conditions are those that are dangerous or create inaccessibility for personnel, staff and may include such things as local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable, such as (e.g., drought or extended frozen conditions). Unless specifically stated otherwise, this waiver may be applied to any monitoring required under this permit. Narrative documentation of conditions necessitating the use of the waiver shall be kept with the SWPPP.

4. Inactive and unstaffed sites (including temporarily inactive sites).

a. A waiver of the quarterly visual monitoring, routine facility inspections, and monitoring requirements (including benchmark, effluent limitation, and impaired waters monitoring) may be granted by the board department at a facility that is both inactive and unstaffed, as long as the facility remains inactive and unstaffed and there are no industrial materials or activities exposed to stormwater. The owner of such a the facility is only required to conduct an annual routine site inspection in accordance with the requirements in Part III B 5.

b. An inactive and unstaffed sites waiver request shall be submitted to the board department for approval and shall include the name of the facility; the facility's VPDES general permit registration number; a contact person, phone telephone number, and email address; the reason for the request; and the date the facility became or will become inactive and unstaffed. The waiver request shall be signed and certified in accordance with Part II K. If this waiver is granted, a copy of the request and the board's department's written approval of the waiver shall be maintained with the SWPPP.

c. If circumstances change and industrial materials or activities become exposed to stormwater, or the facility becomes either active or staffed, the permittee shall notify the department within 30 days, and all quarterly visual monitoring, routine facility inspections, and monitoring requirements shall be resumed immediately.

d. The board department retains the right to revoke this waiver when it is determined that the discharge is causing, has a reasonable potential to cause, or contributes to a water quality standards violation.

e. Inactive and unstaffed facilities covered under Sector G (Metal Mining) and Sector H (Coal Mines and Coal Mining-Related Facilities) are not required to meet the "no industrial materials or activities exposed to stormwater" standard to be eligible for this waiver, consistent with the conditional

exemption requirements established in Part IV Sector G and Part IV Sector H.

5. Reporting monitoring results.

a. Reporting to the department. The permittee shall follow the reporting requirements and deadlines below in Table 70-4 for the types of monitoring that apply to the facility:

TABLE 70-4 MONITORING REPORTING REQUIREMENTS	
Semiannual Monitoring	Submit the results by January 10 and by July 10.
Quarterly Visual Monitoring	Retain results with SWPPP - do not submit unless requested to do so by the department.

Permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II C.

b. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

6. Corrective actions.

a. ~~Data exceeding benchmark concentration values.~~

~~(1) If the benchmark monitoring result exceeds the benchmark concentration value for that parameter, the permittee shall review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Revisions to the SWPPP shall be completed within 60 days after an exceedance is discovered. When control measures need to be modified or added (distinct from regular preventive maintenance of existing control measures described in Part III C), implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the exceedance is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the exceedance is discovered. Where a construction compliance schedule is included in the SWPPP, the SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected portions of the facility prior to completion of the permanent control measure. Any control measure modifications shall be documented and~~

dated, and retained with the SWPPP, along with the amount of time taken to modify the applicable control measures or implement additional control measures.

(2) Natural background pollutant levels. If the concentration of a pollutant exceeds a benchmark concentration value, and the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, corrective action is not required provided that:

(a) The concentration of the benchmark monitoring result is less than or equal to the concentration of that pollutant in the natural background;

(b) The permittee documents and maintains with the SWPPP the supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. The supporting rationale shall include any data previously collected by the facility or others (including literature studies) that describe the levels of natural background pollutants in the facility's stormwater discharges; and

(c) The permittee notifies the department on the benchmark monitoring DMR that the benchmark exceedances are attributable solely to natural background pollutant levels.

Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.

b. Corrective actions. a. The permittee shall take corrective action whenever:

(1) Routine facility inspections, inspections by local, state or federal officials, or any other process, observation or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements;

(2) There is any exceedance of an effluent limitation (including coal pile runoff), TMDL wasteload allocation, or a reduction required by a local ordinance established by a municipality to meet Chesapeake Bay TMDL requirements; or

(3) The department determines, or the permittee becomes aware, that the stormwater control measures are not stringent enough for the discharge to meet applicable water quality standards; or

(4) Benchmark monitoring results exceed the benchmark concentration value for a parameter.

The permittee shall review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the SWPPP shall be completed within 60 days following the discovery of the deficiency. When control measures need to be modified or added (distinct from regular preventive

maintenance of existing control measures described in Part III C), implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected portion of the facility prior to before completion of the permanent control measure. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP. Any corrective actions taken shall be documented and retained with the SWPPP. Reports of corrective actions shall be signed in accordance with Part II K. Any control measure modifications shall be dated and document the amount of time taken to modify the applicable control measures or implement additional control measures.

b. Natural background pollutant levels. If the concentration of a pollutant exceeds a benchmark concentration value and the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, corrective action is not required provided that:

(1) The concentration of the benchmark monitoring result is less than or equal to the concentration of that pollutant in the natural background;

(2) The permittee documents and maintains with the SWPPP the supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. The supporting rationale shall include any data previously collected by the facility or others (including literature studies) that describe the levels of natural background pollutants in the facility's stormwater discharges; and

(3) The permittee notifies the department on the benchmark monitoring DMR that the benchmark exceedances are attributable solely to natural background pollutant levels. Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.

c. Follow-up reporting. If at any time monitoring results indicate show that discharges from the facility exceed an effluent limitation or a TMDL wasteload allocation, or the department determines that discharges from the facility are causing or contributing to an exceedance of a water

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quality standard, immediate steps shall be taken to eliminate **the** exceedances in accordance with **the above** Part I A 6 b (Corrective actions). Within 30 calendar days of implementing **the** relevant corrective action, an exceedance report shall be submitted to **the** department and shall be signed in accordance with Part II K. The following information shall be included in **the** report:

- (1) General permit registration number;
- (2) Facility name and address;
- (3) Receiving water for each outfall exceeding an effluent limitation of TMDL wasteload allocation;
- (4) Monitoring data from **the** event being reported;
- (5) A narrative description of **the** situation;
- (6) A description of actions taken since **the** event was discovered and steps taken to minimize to **the** extent feasible pollutants in **the** discharge; and
- (7) A local facility contact name, email address, and phone number.

B. Special conditions.

1. Authorized nonstormwater discharges. Except as provided in this section or in Part IV (~~9VAC25-151-90 et seq.~~), all discharges covered by this permit shall be composed entirely of stormwater. **The** following nonstormwater discharges are authorized by this permit:

- a. Discharges from emergency firefighting activities or firefighting training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of **the** Code of Virginia;
- b. Fire hydrant flushings, managed in a manner to avoid an instream impact;
- c. Potable water, including water line flushings, managed in a manner to avoid an instream impact;
- d. Uncontaminated condensate from air conditioners, coolers, and other compressors and from **the** outside storage of refrigerated gases or liquids;
- e. Irrigation drainage;
- f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with **the** approved labeling;
- g. Routine external building washdown that does not use detergents or hazardous cleaning products and is managed in a manner to avoid an instream impact;
- h. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed). Pavement wash waters shall be managed in a manner to avoid an instream impact;
- i. Uncontaminated groundwater or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of **the** facility, but not intentional discharges from **the** cooling tower (e.g., "piped" cooling tower blowdown or drains).

All other nonstormwater discharges are not authorized and shall either be eliminated or covered under a separate VPDES permit.

2. Releases of hazardous substances or oil in excess of reportable quantities. **The** discharge of hazardous substances or oil in **the** stormwater discharges from **the** facility shall be prevented or minimized in accordance with **the** SWPPP for **the** facility. This permit does not authorize **the** discharge of hazardous substances or oil resulting from an on-site spill. This permit does not relieve **the** permittee of **the** reporting requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of **the** Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period:

- a. **The** permittee is required to notify **the** department in accordance with **the** requirements of Part II G as soon as he has knowledge of **the** discharge;
- b. Where a release enters an MS4, **the** permittee shall also notify **the** owner of **the** MS4; and
- c. **The** SWPPP required under Part III shall be reviewed to identify measures to prevent **the** reoccurrence of ~~such~~ **the** releases and to respond to ~~such~~ **the** releases, and **the** SWPPP shall be modified where appropriate.

3. Colocated industrial activity. If **the** facility has industrial activities occurring on-site which are described by any of **the** activities in Part IV of **the** permit (~~9VAC25-151-90 et seq.~~), those industrial activities are considered to be colocated industrial activities. Stormwater discharges from colocated industrial activities are authorized by this permit, provided that **the** permittee complies with any and all additional SWPPP and monitoring requirements from Part IV applicable to that particular colocated industrial activity. **The** permittee shall be responsible for additional SWPPP and monitoring requirements applicable to **the** colocated industrial activity by examining **the** narrative descriptions of all discharges covered under this section.

4. **The** stormwater discharges authorized by this permit may be combined with other sources of stormwater ~~which that~~ are not required to be covered under a VPDES permit, so long as **the** combined discharge is in compliance with this permit.

5. There shall be no discharge of waste, garbage, or floating debris in other than trace amounts.

6. Approval for coverage under this general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

7. Discharges to waters subject to TMDL wasteload allocations. Owners of facilities that are a source of the specified pollutant of concern to waters for which a TMDL wasteload allocation has been approved prior to by EPA before the term of this permit shall incorporate measures and controls into the SWPPP required by Part III that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. The facility's SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility. If the TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall perform any required monitoring in accordance with Part I A 1 c (3), and implement control measures designed to meet that allocation.

8. Discharges to waters subject to the Chesapeake Bay TMDL.

a. Owners of facilities in the Chesapeake Bay watershed shall monitor their discharges for total suspended solids (TSS), total nitrogen (TN), and total phosphorus (TP) to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four monitoring periods (i.e., the first two years of permit coverage). Monitoring periods are specified in Part I A 2. Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

b. Facilities that were covered under the 2014 industrial stormwater general permit shall comply with the following:

(1) Facilities that submitted a Chesapeake Bay TMDL action plan that was approved by the board during the 2014 industrial stormwater general permit term shall continue to implement the approved Chesapeake Bay TMDL action plan during this permit term. An annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions unless this reporting requirement is waived by the department in accordance with Part I B 8 g. Monitoring in accordance with Part I B 8 a is not required for these facilities during this permit term.

(2) Facilities that completed four samples for TSS, TN, and TP during the 2014 industrial stormwater general permit term shall utilize the procedures in Part I B 8 c (2) to calculate their facility stormwater loads. The permittee shall submit a copy of the calculations and Chesapeake Bay TMDL action plan if required under Part I B 8 f to the department within 60 days of coverage under this general permit.

(3) Facilities that did not complete four samples for TSS, TN, and TP during the 2014 industrial stormwater general permit term shall be subject to completing the monitoring requirements in Part I B 8 a beginning with the first full monitoring period after receiving permit coverage. Calculations and a Chesapeake Bay TMDL action plan if required under Part I B 8 f shall be submitted no later than 90 days following the completion of the fourth monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department and maintained with the facility's SWPPP.

(4) Facilities that monitored for TSS, TN, or TP may use the applicable sampling data collected during the 2014 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirement in accordance with Part I B 8 a.

c. Chesapeake Bay TMDL wasteload allocations and Chesapeake Bay TMDL action plans.

(1) EPA's Chesapeake Bay TMDL (December 29, 2010) includes wasteload allocations for VPDES permitted industrial stormwater facilities as part of the regulated stormwater aggregate load. EPA used data submitted by Virginia with the Phase I Chesapeake Bay TMDL Watershed Implementation Plan, including the number of industrial stormwater permits per county and the number of urban acres regulated by industrial stormwater permits, as part of their development of the aggregate load. Aggregate loads for industrial stormwater facilities were appropriate because actual facility loading data were not available to develop individual facility wasteload allocations.

Virginia estimated the loadings from industrial stormwater facilities using actual and estimated facility acreage information and TP, TN, and TSS loading rates from the Northern Virginia Planning District Commission (NVPDC) Guidebook for Screening Urban Nonpoint Pollution Management Strategies (Annandale, VA November 1979), prepared for the Metropolitan Washington Council of Governments. The loading rates used were as follows:

TP—High (80%) imperviousness industrial; 1.5 lb/ac/yr
TN—High (80%) imperviousness industrial; 12.3 lb/ac/yr
TSS—High (80%) imperviousness industrial; 440 lb/ac/yr

The actual facility area information and the TP, TN, and TSS data collected for this permit will be used by the

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board to quantify the nutrient and sediment loads from VPDES permitted industrial stormwater facilities.

(2) Calculation of facility loads. The permittee shall analyze the nutrient and sediment data collected in accordance with Part I B 8 a and 8 b to determine if pollution reductions are required for this permit term. The permittee shall average the data collected at the facility for each of the pollutants of concern (POC) (e.g., TP, TN, and TSS) and compare the results to the loading rates for TP, TN, and TSS presented in Part I B 8 c (1).

The following formula may be used to determine the loading rate:

$$L = 0.226 \times P \times P_j \times (0.05 + (0.9 \times I_a)) \times C$$

where:

L = the POC loading rate (lb/acre/year)

P = the annual rainfall (inches/year) The permittee may use either actual annual average rainfall data for the facility location (in inches/year), the Virginia annual average rainfall of 44.3 inches/year, or another method approved by the board.

P_j = the fraction of annual events that produce runoff The permittee shall use 0.9 unless the board approves another rate.

I_a = the impervious fraction of the facility impervious area of industrial activity to the facility industrial activity area

C = the POC average concentration of all facility samples (mg/L) Facilities with multiple outfalls shall calculate a weighted average concentration for each outfall using the drainage area of each outfall.

For total phosphorus and total suspended solids, all daily concentration data below the quantitation level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported.

For total nitrogen, if none of the daily concentration data for the respective species (i.e., TKN, nitrate, or nitrite) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point is reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

d. The permittee shall submit a copy of the calculations to the department within 90 days from the end of the last monitoring period that satisfies the monitoring requirement in Part I B 8 a. Calculations shall be submitted to the DEQ regional office serving the area where the industrial facility is located, on a form provided by the department, and maintained with the facility's SWPPP.

e. Any modification to the facility's industrial acreage or impervious industrial acreage shall require the facility to recalculate facility loading rates. This may require the facility to modify the facility's Chesapeake Bay TMDL action plan or submit a Chesapeake Bay TMDL action plan as appropriate. Any recalculation of facility loading rates or modifications to a Chesapeake Bay TMDL action plan shall be submitted to the department within 90 days of the date on which the permittee completes a site modification. If previous monitoring is no longer representative of the modified facility, monitoring in accordance with Part I B 8 a shall commence within 90 days of the modification and the revised calculations and Chesapeake Bay TMDL action plan if required under Part I B 8 f shall be submitted no later than 90 days following completion of the fourth monitoring period.

f. Chesapeake Bay TMDL action plan requirements. If the calculated facility loading rate for TP, TN, or TSS is above the loading rates for TP, TN, or TSS presented in Part I B 8 c (1), then the permittee shall develop and submit a Chesapeake Bay TMDL action plan to the department.

The Chesapeake Bay TMDL action plan shall be submitted on a form provided by the department to the regional office serving the area where the industrial facility is located within 90 days following the completion of the fourth monitoring period. A copy of the current Chesapeake Bay TMDL action plan and all facility loading rate calculations shall be maintained with the facility's SWPPP. The Chesapeake Bay TMDL action plan shall include:

(1) A determination of the total pollutant load reductions for TP, TN, and TSS (as appropriate) necessary to reduce the annual loads from industrial activities. This shall be determined by multiplying the industrial acreage times the difference between the TMDL loading rates listed in Part I B 8 c (1) and the actual facility loading rates calculated in accordance with Part I B 8 c (2). The reduction applies to the total difference calculated for each pollutant of concern;

(2) The means and methods, such as management practices and retrofit programs, that will be utilized to meet the required reductions determined in Part I B 8 f (1) and a schedule to achieve those reductions by June 30, 2024. The schedule should include annual milestones to demonstrate the ongoing progress in meeting those reductions; and

(3) The permittee may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting, to meet the required reductions.

g. A permittee required to develop and implement a Chesapeake Bay TMDL Action Plan shall submit an

annual report to the department by June 30 of each year describing the progress in meeting the required reductions.

~~h. Chesapeake Bay TMDL action plan annual reporting waiver. Upon implementation of the facility's Chesapeake Bay TMDL action plan, permittees may submit a waiver for the annual reporting requirements. The waiver request shall be submitted for board approval to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Annual reporting requirements will be in effect until the permittee receives notice from the department that the waiver has been approved. A copy of the waiver approval shall be maintained with the SWPPP. The waiver may be revoked for cause by the board. A waiver request may be approved by the board once the permittee demonstrates that they have achieved all of the required pollutant reductions calculated under Part I B 8 f (1). Pollutant reductions may be achieved using a combination of the following alternatives:~~

~~(1) Reductions provided by one or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed in 9VAC25-870-65, approved BMPs found on the Virginia Stormwater Clearinghouse website, or BMPs approved by the Chesapeake Bay Program. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee;~~

~~(2) Implementation of site specific BMPs followed by a minimum of four stormwater samples collected in accordance with sampling requirements in Part I B 8 a that demonstrate pollutant loadings have been reduced below those calculated under Part I B 8 c. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee; or~~

~~(3) Acquisition of nonpoint source credits certified by the board as perpetual in accordance with § 62.1-44.19:20 of the Code of Virginia.~~

~~9. 8. Discharges through a regulated MS4 to waters subject to the Chesapeake Bay TMDL. In addition to the requirements of this permit, any facility with industrial activity stormwater discharges through a regulated MS4 that is notified by the MS4 operator that the locality has adopted ordinances to meet the Chesapeake Bay TMDL shall incorporate measures and controls into its SWPPP to comply with applicable local TMDL ordinance requirements.~~

~~10. 9. Expansion of facilities that discharge to waters subject to the Chesapeake Bay TMDL. Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010), states that the wasteloads from any expansion of an existing permitted facility discharging stormwater in the Chesapeake Bay watershed cannot exceed the nutrient and sediment loadings that were discharged~~

from the expanded portion of the land prior to the land being developed for the expanded industrial activity.

a. For any industrial activity area expansions (i.e., construction activities, including clearing, grading, and excavation activities) that commence begin on or after July 1, 2019 2024, (the effective date of this permit), the permittee shall document in the SWPPP the information and calculations used to determine the nutrient and sediment loadings discharged from the expanded land area prior to before the land being was developed, and the measures and controls that were employed to meet the no net increase of stormwater nutrient and sediment load as a result of the expansion of the industrial activity. Any land disturbance that is exempt from permitting under the VPDES construction stormwater general permit regulation (9VAC25-880) is exempt from this requirement.

b. The permittee may use the VSMP water quality design criteria to meet the requirements of Part I B 10 a. Under this criteria, the total phosphorus load shall not exceed the greater of (i) the total phosphorus load that was discharged from the expanded portion of the land prior to before the land being developed for the industrial activity or (ii) 0.41 pounds per acre per year. Compliance with the water quality design criteria may be determined utilizing the Virginia Runoff Reduction Method or another equivalent methodology approved by the board department. Design specifications and pollutant removal efficiencies for specific BMPs can be found on the Virginia Stormwater BMP Clearinghouse website.

c. The permittee may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting, to meet the no net increase requirement.

~~11. 10. Water quality protection. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards. The board department expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards.~~

~~12. 11. Adding or deleting stormwater outfalls. The permittee may add new or delete existing stormwater outfalls at the facility as necessary and appropriate. The permittee shall update the SWPPP and notify the department of all outfall changes within 30 days of the change. The permittee shall submit a copy of the updated SWPPP site map with this notification.~~

~~13. 12. Antidegradation requirements for new or increased discharges to high quality waters. Facilities that add new outfalls, or increase their discharges from existing outfalls that discharge directly to high quality waters designated under Virginia's water quality standards antidegradation~~

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policy under 9VAC25-260-30 A 2 may be notified by the department that additional control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or may be notified that an individual permit is required in accordance with 9VAC25-31-170 B 3.

~~14.~~ 13. Termination of permit coverage.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of stormwater associated with industrial activity from the facility;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted;

(3) All stormwater discharges associated with industrial activity have been covered by an individual VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board department agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES industrial stormwater general permit registration number;

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges of stormwater associated with industrial activity from the facility;

(c) A statement indicating that all stormwater discharges associated with industrial activity have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason and a description of the reason; and

(5) The following certification: "I certify under penalty of law that all stormwater discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit, or that I am no longer the owner of the industrial activity,

or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge stormwater associated with industrial activity in accordance with the general permit, and that discharging pollutants in stormwater associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

c. The notice of termination shall be signed in accordance with Part II K.

d. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

Part II

Conditions Applicable to All VPDES Permits

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such the analyses.

2. The permittee shall retain copies of the SWPPP, including any modifications made during the term of this permit, records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation,

copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board department.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported in the department's electronic discharge monitoring report (e-DMR) system. All reports and forms submitted in compliance with this permit shall be submitted electronically by the permittee in accordance with 9VAC25-31-1020.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in e-DMR or reporting form specified by the department.

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information ~~which that the board department~~ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board department may require the permittee to furnish, ~~upon on request, such~~ plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters, or ~~such~~ other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department ~~upon on request~~; copies of records required to be kept by this permit.

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

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

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 1 b. Unusual and extraordinary discharges include any discharge resulting from:

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

I. Reports of noncompliance.

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

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

2. The permittee shall report all instances of noncompliance not reported under Part II I 1 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 1.
3. The immediate (within 24 hours) reports required in Part II G, H and I ~~may shall~~ be made to the department's regional office. Reports may be made by telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx> <https://www.deq.virginia.gov/get-involved/pollution-response>. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement the online portal shall be used. For emergencies, call the Virginia Department of Emergency Management maintains a 24-hour telephone service Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which ~~commenced~~ began:

- (1) After promulgation of standards of performance under § 306 of the Clean Water Act which are applicable to such the source; or

- (2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act ~~which that~~ are applicable to such the source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants ~~which that~~ are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such the alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity ~~which that~~ may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

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

for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit coverage termination or denial of a permit coverage renewal.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board department. The board department shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit ~~does not convey~~ neither conveys any property rights in either real or personal property or any exclusive privileges; nor ~~does it authorize~~ authorizes any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

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

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

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~which that~~ are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems ~~which that~~ are installed

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by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

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

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

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board department may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as (e.g., the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime). This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board department may approve an anticipated bypass, after considering its adverse effects, if the board department determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, including an authorized contractor acting as a representative of the administrator, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon on the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

X. Permit actions. Permit coverages may be terminated for cause. The filing of a request by the permittee for a permit termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board department;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board department does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

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

9VAC25-151-80. Stormwater pollution prevention plans.

A stormwater pollution prevention plan (SWPPP) shall be developed and implemented for the facility covered by this permit. The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility, and to meet applicable effluent limitations and water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as (i.e., a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act, or best management practices (BMP) programs otherwise required for the facility, provided that the incorporated plan meets or exceeds the plan requirements of Part III B (Contents of the SWPPP). All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III B, the permittee shall develop the missing SWPPP elements and include them in the required plan.

A. Deadlines for SWPPP preparation and compliance.

1. Facilities that were covered under the 2014 2019 Industrial Stormwater General Permit. Owners of facilities that were covered under the 2014 2019 Industrial Stormwater General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 90 days of the board department granting coverage under this permit.

2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit shall prepare and implement the SWPPP prior to before submitting the registration statement.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

4. Extensions. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

B. Contents of the SWPPP. The contents of the SWPPP shall comply with the requirements listed below and those in the appropriate sectors of Part IV (9VAC25-151-90 et seq.). These requirements are cumulative. If a facility has colocated industrial activities that are covered in more than one sector of Part IV, that facility's SWPPP shall comply with the requirements listed in all applicable sectors. The following requirements are applicable to all SWPPPs developed under this general permit. The SWPPP shall include, at a minimum, the following items:

1. Pollution prevention team. The SWPPP shall identify the staff individuals by name or title who comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

2. Site description. The SWPPP shall include the following:

a. A description of the industrial activities at the facility.

b. A site map identifying the following:

(1) The boundaries of the property and the size of the property in acres;

(2) The location and extent of significant structures and impervious surfaces;

(3) Locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow using arrows to indicate show which direction stormwater will flow;

(4) Locations of all stormwater control measures, including BMPs;

(5) Locations of all surface water bodies, including wetlands;

(6) Locations of potential pollutant sources identified under Part III B 3;

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(7) Locations where significant spills or leaks identified under Part III B 3 c have occurred;

(8) Locations of stormwater outfalls.

(a) An approximate outline of the area draining to each outfall;

(b) The drainage area of each outfall in acres;

(c) The longitude and latitude of each outfall;

(d) The location of any MS4 conveyance receiving discharge from the facility; and

(e) Each outfall shall be identified with a unique numerical identification code. For example: Outfall Number 001, Outfall Number 002, etc.;

(9) Location and description of all nonstormwater discharges;

(10) Location of any storage piles containing salt;

(11) Locations and sources of suspected run-on to the site from an adjacent property if the run-on is suspected of containing significant quantities of pollutants; and

(12) Locations of all stormwater monitoring points.

c. Receiving waters and wetlands. The name of all surface waters receiving discharges from the site, including intermittent streams, dry sloughs, and arroyos. Provide a description of wetland sites that may receive discharges from the facility. If the facility discharges through an MS4, identify the MS4 operator, and the receiving water to which the MS4 discharges.

3. Summary of potential pollutant sources. The SWPPP shall identify each separate area at the facility where industrial materials or activities are exposed to stormwater. Industrial materials or activities include material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product. For each separate area identified, the description shall include:

a. Activities in the area. A list of the industrial activities exposed to stormwater.

b. Pollutants. A list of the pollutants, pollutant constituents, or industrial chemicals associated with each industrial activity that could potentially be exposed to stormwater. The pollutant list shall include all significant materials handled, treated, stored or disposed that have been exposed to stormwater in the three years prior to before the date this SWPPP was prepared or amended. The list shall include any hazardous substances or oil at the facility.

c. Spills and leaks. The SWPPP shall clearly identify areas where potential spills and leaks that can contribute

pollutants to stormwater discharges can occur and their corresponding outfalls. The SWPPP shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a stormwater conveyance during the three-year period prior to before the date this SWPPP was prepared or amended. The list shall be updated within 60 days of the incident if significant spills or leaks occur in exposed areas of the facility during the term of the permit.

d. Sampling data. The SWPPP shall include stormwater discharge sampling data collected during the previous three years.

4. Stormwater controls.

a. Control measures shall be implemented for all the areas identified in Part III B 3 to prevent or control pollutants in stormwater discharges from the facility. Regulated stormwater discharges from the facility include stormwater run-on that commingles with stormwater discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location, and implementation of all control measures for each area where industrial materials or activities are exposed to stormwater.

Selection of control measures shall take into consideration:

(1) That preventing stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from stormwater;

(2) Control measures generally shall be used in combination with each other for most effective water quality protection;

(3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;

(4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid groundwater contamination);

(5) Flow attenuation by use of open vegetated swales and natural depressions can reduce instream impacts of erosive flows;

(6) Conservation or restoration of riparian buffers will help protect streams from stormwater runoff and improve water quality; and

(7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

b. Nonnumeric technology-based effluent limits. The permittee shall implement the following types of control measures to prevent and control pollutants in the stormwater discharges from the facility, unless it can be

demonstrated and documented that ~~such~~ **the** controls are not relevant to **the** discharges.

(1) Good housekeeping. **The** permittee shall keep clean all exposed areas of **the** facility that are potential sources of pollutants to stormwater discharges. **The** permittee shall perform **the** following good housekeeping measures to minimize pollutant discharges:

(a) **The** SWPPP shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers;

(b) As feasible, **the** facility shall sweep or vacuum;

(c) Store materials in containers constructed of appropriate materials;

(d) Manage all waste containers to prevent a discharge of pollutants;

(e) Minimize **the** potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting ~~such~~ **the** materials prior to ~~before~~ **the** discharge; and

(f) Facilities that handle pre-production plastic or plastic waste shall implement BMPs to eliminate stormwater discharges of plastics.

(2) Eliminating and minimizing exposure. To **the** extent practicable, manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. Eliminating exposure at all industrial areas may make **the** facility eligible for **the** "Conditional Exclusion for No Exposure" provision of 9VAC25-31-120 E, ~~thereby~~ eliminating **the** need to have a permit. Unless infeasible, facilities shall implement **the** following:

(a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants;

(b) Locate materials, equipment, and activities so that potential leaks and spills are contained, or able to be contained, or diverted before discharge;

(c) Clean up spills and leaks immediately, ~~upon~~ **on** discovery of **the** spills or leaks, using dry methods (e.g., absorbents) to prevent **the** discharge of pollutants;

(d) Store leaking vehicles and equipment indoors or, if stored outdoors, use drip pans and adsorbents;

(e) Utilize appropriate spill or overflow protections equipment;

(f) Perform all vehicle maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and

(g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.

(3) Preventive maintenance. **The** permittee shall have a preventive maintenance program that includes regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid situations that could result in leaks, spills, and other releases of pollutants in stormwater discharged from **the** facility. This program is in addition to **the** specific control measure maintenance required under Part III C (Maintenance).

(4) Spill prevention and response procedures. **The** SWPPP shall describe **the** procedures that will be followed for preventing and responding to spills and leaks, including:

(a) Preventive measures, ~~such as~~ (e.g., barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling);

(b) Response procedures, including notification of appropriate facility ~~personnel~~ **staff**, emergency agencies, and regulatory agencies, and procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable Resource Conservation and Recovery Act regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of **the** Pollution Prevention Team;

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," "fertilizers and pesticides," etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur; and

(d) Contact information for individuals and agencies that must be notified ~~in the event~~ of a spill shall be included in **the** SWPPP, and in other locations where it will be readily available.

(5) Salt storage piles or piles containing salt. Storage piles of salt or piles containing salt used for deicing or other commercial or industrial purposes shall be enclosed or covered to prevent exposure to precipitation. **The** permittee shall implement appropriate measures (e.g., good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from **the** pile. All salt storage piles shall be located on an impervious surface. All runoff from **the** pile, and runoff that comes in contact with salt, including under drain systems, shall be collected and contained within a bermed basin lined with concrete or other impermeable materials, or within an underground storage tank or tanks, or within an ~~above-ground~~ **aboveground** storage tank ~~or tanks~~, or

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disposed of through a sanitary sewer (with the permission of the owner of the treatment facility). A combination of any or all of these methods may be used. In no case shall salt contaminated stormwater be allowed to discharge directly to the ground or to surface waters.

(6) Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel staff, etc.). The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, control measure operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(7) Sediment and erosion control. The SWPPP shall identify areas at the facility that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, and stabilization control measures to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

(8) Management of runoff. The SWPPP shall describe the stormwater runoff management practices (i.e., permanent structural control measures) for the facility. These types of control measures shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site.

Structural control measures may require a separate permit under § 404 of the Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

(9) Dust suppression and vehicle tracking of industrial materials. The permittee shall implement control measures to minimize the generation of dust and off-site tracking of raw, final, or waste materials. Stormwater collected on-site may be used for the purposes of dust suppression or for spraying stockpiles. Potable water, well water, and uncontaminated reuse water may also be used for this purpose. There shall be no direct discharge to surface waters from dust suppression activities or as a result of spraying stockpiles.

(10) Airport deicing operations. The permittee shall minimize, and where practicable eliminate, the use of

deicing or anti-icing chemicals in order to reduce the aggregate amount of deicing or anti-icing chemicals used and lessen the environmental impact. The permittee shall minimize contamination of stormwater runoff from aircraft deicing and anti-icing operations and runway deicing operations, if applicable. Where deicing and anti-icing operations occur, the SWPPP shall describe procedures and control measures to manage contaminated stormwater runoff or snow melt (from areas used to dispose contaminated snow) to minimize the amount of pollutants discharged from the site. The following control measure options or their equivalents shall be considered: covering storm sewer inlets, using booms, installing absorptive interceptors in the drain, establishing a dedicated deicing facility with a runoff collection and recovery system; using vacuum or collection trucks; storing contaminated stormwater or deicing fluids in tanks and releasing controlled amounts to a publicly owned treatment works (with permission of the treatment works); collecting contaminated runoff in a wet pond for biochemical decomposition; and directing runoff into vegetative swales or other infiltration measures. Procedures and selected control measures should at all times be consistent with considerations of flight safety.

5. Routine facility inspections. Personnel Staff who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater, areas where spills or leaks have occurred in the past three years, discharge points, and control measures. At least one member of the pollution prevention team shall participate in the routine facility inspections. The inspection frequency shall be specified in the SWPPP based upon on a consideration of the level of industrial activity at the facility, but shall be at a minimum of once per calendar quarter unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Inspections shall be performed during operating hours. At least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.

The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status. Certain sectors in Part IV have additional inspection requirements. If the VEEP E3/E4 waiver language is not included for the sector specific inspections, these additional inspection requirements may not be waived. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 60 days of the inspection, unless permission for a later date is granted in writing by the director. The

results of the inspections shall be documented in the SWPPP and shall include at a minimum:

- a. The inspection date;
- b. The names of the inspectors;
- c. Weather information and a description of any discharges occurring at the time of the inspection;
- d. Any previously unidentified discharges of pollutants from the site;
- e. Any control measures needing maintenance or repairs;
- f. Any failed control measures that need replacement;
- g. Any incidents of noncompliance observed; and
- h. Any additional control measures needed to comply with the permit requirements.

C. Maintenance. The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all control measures, and shall include a description of the back-up practices that are in place should a runoff event occur while a control measure is off-line. The effectiveness of nonstructural control measures shall also be maintained by appropriate means (e.g., spill response supplies available and personnel staff trained, etc.).

All control measures identified in the SWPPP shall be maintained in effective operating condition and shall be observed at least annually when a stormwater discharge is occurring to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

If routine facility inspections required by Part III B 5 identify control measures that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to before the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of control measures, including the dates of regular maintenance, dates of discovery of areas in need of repair or replacement, dates for repairs, dates that the control measures returned to full function, and the justification for any extended maintenance or repair schedules.

D. Nonstormwater discharges.

1. Discharges of certain sources of nonstormwater listed in Part I B 1 are allowable discharges under this permit. All other nonstormwater discharges are not authorized and shall be either eliminated or covered under a separate VPDES permit.
2. Annual outfall evaluation for unauthorized discharges.

a. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges. The documentation shall include:

- (1) The date of the evaluation;
- (2) A description of the evaluation criteria used;
- (3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;
- (4) A description of the results of the evaluation for the presence of unauthorized discharges; and
- (5) The actions taken to eliminate unauthorized discharges if any were identified.

b. The permittee may request in writing to the department that the facility be allowed to conduct annual outfall evaluations at 20% of the outfalls. If approved, the permittee shall evaluate at least 20% of the facility outfalls each year on a rotating basis such so that all facility outfalls will be evaluated during the period of coverage under this permit.

E. Signature and SWPPP review.

1. Signature and location. The SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part I A 6, shall be signed in accordance with Part II K, dated, and retained on-site at the facility covered by this permit in accordance with Part II B 2. All other changes to the SWPPP, and other permit compliance documentation, shall be signed and dated by the person preparing the change or documentation. For inactive and unstaffed facilities, the plan may be kept at the nearest office of the permittee.

2. Availability. The permittee shall retain a copy of the current SWPPP (hard copy or electronic) required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.

3. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part I A 6 a (Data exceeding benchmark concentration values) or Part I A 6 b (Corrective actions). Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part I A 6 a and Part I A 6 b, and shall be signed and dated in accordance with Part III E 1.

The director may notify the permittee at any time that the SWPPP, control measures, or other components of the facility's stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met, and may include required modifications to the stormwater

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program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such the notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

F. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP as appropriate whenever:
 - a. There is construction or a change in design, operation, or maintenance at the facility that has a significant effect on the discharge, or the potential for the discharge, of pollutants from the facility;
 - b. Routine inspections or compliance evaluations determine that there are deficiencies in the control measures, including BMPs;
 - c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;
 - d. There is a significant spill, leak, or other release at the facility;
 - e. There is an unauthorized discharge from the facility; or
 - f. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility, consistent with Part I B.
2. SWPPP modifications shall be made within 60 calendar days after discovery, observation or event requiring a SWPPP modification. Implementation of new or modified control measures (distinct from regular preventive maintenance of existing control measures described in Part III C) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.
3. If the SWPPP modification is based on a significant spill, leak, release, or unauthorized discharge, include a description and date of the incident, the circumstances leading to the incident, actions taken in response to the incident, and measures to prevent the recurrence of such releases. Unauthorized discharges are subject to the reporting requirements of Part II G of this permit.

Part IV

Sector Specific Permit Requirements

9VAC25-151-85. Sector specific permit requirements.

The permittee must only comply with the additional requirements of Part IV of this permit that apply to the sectors of industrial activity located at the facility. These sector specific requirements are in addition to the requirements specified in Parts I, II, and III of this permit. All numeric

effluent limitations and benchmark monitoring concentration values reflect two significant digits, unless otherwise noted.

9VAC25-151-90. Sector A - Timber products facilities (including mulch, wood, and bark facilities and mulch dyeing facilities).

~~The permittee must only comply with the additional requirements of Part IV (9VAC25-151-90 et seq.) that apply to the sectors of industrial activity located at the facility. These sector specific requirements are in addition to the requirements specified in Parts I, II and III of this permit. All numeric effluent limitations and benchmark monitoring concentration values reflect two significant digits, unless otherwise noted.~~

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities generally classified under Standard Industrial Classification (SIC) Codes 2491 and 2499 that are engaged in the following activities: cutting timber and pulpwood (those that have log storage or handling areas), mills, including merchant, lath, shingle, cooperage stock, planing, plywood and veneer, and producing lumber and wood materials; wood preserving, manufacturing wood buildings or mobile homes; and manufacturing finished articles made entirely of wood or related materials, except for wood kitchen cabinet manufacturers (SIC Code 2434), and mulch, wood, and bark facilities, including mulch dyeing operations (SIC Code 24991303).

B. Special conditions.

1. Prohibition of nonstormwater discharges. Discharges of stormwater from areas where there may be contact with chemical formulations applied to provide surface protection are not authorized by this permit. Surface protection includes chemical application to control sap stain, mold, mildew, and insects. These discharges must be covered under a separate VPDES permit. Discharge of wet dye drippings from mulch dyeing operations are also prohibited.

2. Authorized nonstormwater discharges. In addition to the discharges described in Part I B 1, the following nonstormwater discharges may be authorized by this permit provided the nonstormwater component of the discharge is in compliance with ~~9VAC25-151-90 subsection C of this section and the~~ effluent limitations described in ~~9VAC25-151-90 subsection D of this section~~; discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage.

C. Stormwater controls. The description of stormwater management controls shall address the following areas of the site: log, lumber, and wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and equipment and vehicle maintenance, storage, and repair areas. Facilities that surface protect or preserve wood products shall address specific

control measures, including any BMPs, for wood surface protection and preserving activities. Facilities that dye mulch shall address specific control measures to prevent the discharge of wet dye drippings and to prevent seepage of pollutants to groundwater.

The SWPPP shall address the following minimum components:

1. Good housekeeping. Good housekeeping measures in storage areas, loading and unloading areas, and material handling areas shall be designed to:
 - a. Limit the discharge of wood debris;
 - b. Minimize the leachate generated from decaying wood materials; and
 - c. Minimize the generation of dust.
2. Routine facility inspections. Inspections at processing areas, transport areas, and treated wood storage areas of facilities performing wood surface protection and preservation activities shall be performed monthly to assess the usefulness of practices in minimizing the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with stormwater discharges. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

D. Numeric effluent limitations.

The following numeric effluent limitations shall be met by existing and new facilities. Wet deck storage area runoff. Nonstormwater discharges from areas used for the storage of logs where water, without chemical additives, is intentionally sprayed or deposited on logs to deter decay or infestation by insects are required to meet the following effluent limitations: pH shall be within the range of 6.0-9.0, and there will be no discharge of debris. Chemicals are not allowed to be applied to the stored logs. The term "debris" is defined as woody material such as, for example, bark, twigs, branches, heartwood, or sapwood that will not pass through a 2.54 cm (1 in.) diameter round opening and is present in the discharge from a wet deck storage area. Permittees subject to these numeric limitations shall be in compliance with these limitations through the duration of permit coverage.

Table 90-1 Sector A - Numeric Effluent Limitations	
Parameter	Effluent Limitations
Wet Decking Discharges at Log Storage and Handling Areas (SIC Code 2411)	
pH	6.0 - 9.0 s.u.
Debris, (woody material such as (e.g., bark, twigs, branches, heartwood, or sapwood)	No discharge of debris that will not pass through a 2.54 cm (1") diameter round opening.

E. Benchmark monitoring and reporting requirements. Wood preserving facilities; mulch, wood, and bark facilities; and mulch dyeing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in the appropriate section of Table 90-2.

Table 90-2 Sector A - Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
General Sawmills and Planing Mills (SIC Code 2421)	
Total Suspended Solids (TSS)	100 mg/L
Wood Preserving Facilities (SIC Code 2491)	
Total Recoverable Arsenic ¹	50 150 µg/L
Total Recoverable Chromium ¹	16 µg/L
Total Recoverable Copper ¹	10 13 µg/L
Log Storage and Handling Facilities (SIC Code 2411)	
Total Suspended Solids (TSS)	100 mg/L
Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood and Structural Wood; Wood Containers; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC Codes 2426, 2429, 2431-2439 (except 2434), 2441, 2448, 2449, 2451, 2452, 2493, and 2499).	
Total Suspended Solids (TSS)	100 mg/L
Mulch, Wood, and Bark Facilities (SIC Code 24991303)	
Total Suspended Solids (TSS)	100 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Facilities with Mulch Dyeing/Coloring Operations (SIC Code 24991303): Monitor ONLY those outfalls from the facility that collect runoff from areas where mulch dyeing/coloring activities occur, including but not limited to areas where loading, transporting, and storage of dyed/colored mulch occurs. ²	
Total Suspended Solids (TSS)	100 mg/L
Biochemical Oxygen Demand (BOD5)	30 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Total Recoverable Aluminum	750 1,100 µg/L
Total Recoverable Arsenic	50 150 µg/L
Total Recoverable Cadmium	2.4 1.8 µg/L
Total Recoverable Chromium	16 µg/L

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Total Recoverable Copper	18 <u>13</u> µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 <u>3.2</u> µg/L
Total Recoverable Zinc	120 µg/L
Total Nitrogen	2.2 mg/L
Total Phosphorus	2.0 mg/L

¹Monitoring for metals (arsenic, chromium and copper) is not required for wood preserving facilities using only oil-based preservatives.

²Benchmark monitoring waivers are available to facilities utilizing mulch dye or colorant products that do not contain the specified parameters provided that: (i) monitoring from samples collected during one monitoring period demonstrates that the specific parameter in question is below the quantitation level; (ii) a waiver request with attached laboratory certificate of analysis is submitted to and approved by the board department; and (iii) a certification statement is submitted to the department annually that the facility does not use mulch dyeing products that contain any of the specifically waived parameters. Approved benchmark monitoring waivers shall be kept with the SWPPP.

9VAC25-151-110. Sector C - Chemical and allied products manufacturing.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities engaged in manufacturing the following products and generally described by the SIC code shown:

1. Industrial inorganic chemicals (including SIC Codes 2812-2819);
2. Plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other synthetic fibers, except glass (including SIC Codes 2821-2824);
3. Soap and other detergents, including facilities producing glycerin from vegetable and animal fats and oils; specialty cleaning, polishing, and sanitation preparations; surface active preparations used as emulsifiers, wetting agents, and finishing agents, including sulfonated oils; and perfumes, cosmetics, and other toilet preparations (including SIC Codes 2841-2844); and
4. Nitrogenous and phosphatic basic fertilizers, mixed fertilizer, pesticides, and other agricultural chemicals (SIC Codes 2873-2879). Composting Facilities (SIC Code 2875) are included.

B. Numeric effluent limitations. The following numeric effluent limitations shall be met by existing and new discharges with phosphate fertilizer manufacturing runoff. The provisions of this paragraph subsection are applicable to stormwater discharges from the phosphate subcategory of the fertilizer manufacturing point source category (40 CFR 418.10). The term contaminated stormwater runoff shall mean precipitation runoff, that during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products, or waste product. The concentration of pollutants in stormwater discharges shall not exceed the effluent limitations in Table 110-1.

Table 110-1 Sector C – Numeric Effluent Limitations		
Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category (40 CFR 418.10) - applies to precipitation runoff that, during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products, or waste product (SIC Code 2874)		
Total Phosphorus (as P)	105 mg/L	35 mg/L
Fluoride	75 mg/L	25 mg/L

C. Benchmark monitoring and reporting requirements. Agricultural chemical manufacturing facilities; industrial inorganic chemical facilities; soaps, detergents, cosmetics, and perfume manufacturing facilities; and plastics, synthetics, and resin manufacturing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 110-2.

Table 110-2 Sector C – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Agricultural Chemicals (SIC Codes 2873-2879)	
Total Nitrogen	2.2 mg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Zinc	120 µg/L
Total Phosphorus	2.0 mg/L
Industrial Inorganic Chemicals (SIC Codes 2812-2819)	
Total Recoverable Aluminum	750 <u>1,100</u> µg/L
Total Recoverable Iron	1.0 mg/L

Total Nitrogen	2.2 mg/L
Soaps, Detergents, Cosmetics, and Perfumes (SIC Codes 2841-2844)	
Total Nitrogen	2.2 mg/L
Total Recoverable Zinc	120 µg/L
Plastics, Synthetics, and Resins (SIC Codes 2821-2824)	
Total Recoverable Zinc	120 µg/L
Composting Facilities (SIC Code 2875)	
Total Suspended Solids (TSS)	100 mg/L
Biochemical Oxygen Demand (BOD ₅)	30 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Ammonia	2.14 mg/L
Total Nitrogen	2.2 mg/L
Total Phosphorus	2.0 mg/L

9VAC25-151-130. Sector E - Clay, cement, concrete, and gypsum products.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities generally classified under SIC Codes 3251-3259, 3261-3269, 3274, and 3275 that are engaged in either manufacturing the following products or performing the following activities: structural clay products including tile and brick; pottery and porcelain electrical supplies; and concrete, plaster, and gypsum products.

Concrete block and brick facilities (SIC Code 3271), concrete products facilities, except block and brick (SIC Code 3272), and ready-mixed concrete facilities (SIC Code 3273) are not covered by this permit.

B. Stormwater controls. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

- Facilities shall prevent or minimize the discharge of: spilled cement; aggregate (including sand or gravel); kiln dust; fly ash; settled dust; and other significant materials in stormwater from paved portions of the site that are exposed to stormwater. Measures used to minimize the presence of these materials may include regular sweeping, or other equivalent measures. The SWPPP shall indicate the frequency of sweeping or equivalent measures. The frequency shall be determined based upon on consideration of the amount of industrial activity occurring in the area and frequency of precipitation, but shall not be less than once per week if cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed.

2. Facilities shall prevent the exposure of fine granular solids (such as e.g., cement, fly ash, and kiln dust, etc.) to stormwater. Where practicable, these materials shall be stored in enclosed silos or hoppers, buildings, or under other covering.

C. Numeric effluent limitations. The following numeric effluent limitations shall be met by facilities with cement manufacturing and material storage runoff. Any discharge composed of runoff from the storage of materials, including raw materials, intermediate products, finished products, and waste materials from the manufacture of cement, shall not exceed the limitations in Table 130-1. Runoff from the storage piles shall not be diluted with other stormwater runoff or flows to meet these limitations. Any untreated overflow from facilities designed, constructed, and operated to treat the volume of material storage pile runoff that is associated with a 10-year, 24-hour rainfall event shall not be subject to the TSS or pH limitations.

Table 130-1 Sector E – Numeric Effluent Limitations		
Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Cement Manufacturing Facility, Material Storage Runoff: Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement.		
Total Suspended Solids (TSS)	50 mg/L	
pH	6.0 - 9.0 s.u.	

D. Benchmark monitoring and reporting requirements. Clay product manufacturers (SIC Codes 3251-3259, SIC Codes 3261-3269) and lime and gypsum product manufacturers (SIC Codes 3274, 3275) are required to monitor their stormwater discharges for the pollutants of concern listed in Table 130-2.

Table 130-2 Sector E – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Clay Product Manufacturers (SIC Codes 3251-3259, 3261-3269)	
Total Recoverable Aluminum	750 1,100 ug/L
Lime and Gypsum Product Manufacturers (SIC Codes 3274, 3275)	
Total Suspended Solids (TSS)	100 mg/L
pH	6.0 - 9.0 s.u.
Total Recoverable Iron	1.0 mg/L

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9VAC25-151-140. Sector F - Primary metals.

A. Discharges covered under this section. **The** requirements listed under this section apply to stormwater discharges associated with industrial activity from **the** following types of facilities in **the** primary metal industry, and generally described by **the** SIC codes shown:

1. Steel works, blast furnaces, and rolling and finishing mills, including: steel wire drawing and steel nails and spikes; cold-rolled steel sheet, strip, and bars; and steel pipes and tubes (SIC Codes 3312-3317).
2. Iron and steel foundries, including: gray and ductile iron, malleable iron, steel investment, and steel foundries not elsewhere classified (SIC Codes 3321-3325).
3. Rolling, drawing, and extruding of nonferrous metals, including: rolling, drawing, and extruding of copper; rolling, drawing, and extruding of nonferrous metals except copper and aluminum; and drawing and insulating of nonferrous wire (SIC Codes 3351-3357).
4. Nonferrous foundries (castings), including aluminum die-castings, nonferrous die-castings, except aluminum, aluminum foundries, copper foundries, and nonferrous foundries, except copper and aluminum (SIC Codes 3363-3369).

B. Benchmark monitoring and reporting requirements. Primary metals facilities are required to monitor their stormwater discharges for **the** pollutants of concern listed in Table 140.

Table 140 Sector F – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC Codes 3312-3317)	
Total Recoverable Aluminum	750 <u>1,100</u> µg/L
Total Recoverable Zinc	120 µg/L
Iron and Steel Foundries (SIC Codes 3321-3325)	
Total Recoverable Aluminum	750 <u>1,100</u> µg/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	48 <u>13</u> µg/L
Total Recoverable Iron	4.0 mg/L
Total Recoverable Zinc	120 µg/L
Rolling, Drawing, and Extruding of Nonferrous Metals (SIC Codes 3351-3357)	
Total Recoverable Copper	48 <u>13</u> µg/L
Total Recoverable Zinc	120 µg/L

Nonferrous Foundries (SIC Codes 3363-3369)	
Total Recoverable Copper	48 <u>13</u> µg/L
Total Recoverable Zinc	120 µg/L

9VAC25-151-150. Sector G - Metal mining (ore mining and dressing).

A. Discharges covered under this section. **The** requirements listed under this section apply to stormwater discharges associated with industrial activity from active, temporarily inactive, and inactive metal mining and ore dressing facilities including mines abandoned on federal lands, as classified under SIC Major Group 10. Coverage is required for facilities that discharge stormwater that has come into contact with, or is contaminated by, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on **the** site of **the** operation. SIC Major Group 10 includes establishments primarily engaged in mining of ores, developing mines, or exploring for metallic minerals (ores) and also includes ore dressing and beneficiating operations, whether performed at colocated, dedicated mills or at separate mills, ~~such as~~ (e.g., custom mills). For **the** purposes of this section, **the** term "metal mining" includes any of **the** separate activities listed in this subsection. Covered discharges include:

1. All stormwater discharges from inactive facilities;
2. Stormwater discharges from **the** following areas of active and temporarily inactive metal mining facilities: waste rock and overburden piles if composed entirely of stormwater and not combining with mine drainage; topsoil piles; off-site haul and access roads; on-site haul and access roads constructed of waste rock and overburden if composed entirely of stormwater and not combining with mine drainage; on-site haul and access roads not constructed of waste rock, overburden, or spent ore except if mine drainage is used for dust control; runoff from tailings dams and dikes when not constructed of waste rock or tailings and no process fluids are present; runoff from tailings dams or dikes when constructed of waste rock or tailings and no process fluids are present if composed entirely of stormwater and not combining with mine drainage; concentration building if no contact with material piles; mill site if no contact with material piles; office or administrative building and housing if mixed with stormwater from industrial area; chemical storage area; docking facility if no excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; vehicle and equipment maintenance area and building; parking areas (if necessary); power plant; truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds ~~prior to~~ before December 17, 1990; and partially or inadequately reclaimed areas or areas not released from reclamation bonds;

3. Stormwater discharges from exploration and development of metal mining and ore dressing facilities; and

4. Stormwater discharges from facilities at mining sites undergoing reclamation.

B. Limitations on coverage. Stormwater discharges from active metal mining facilities that are subject to **the** effluent limitation guidelines for **the** Ore Mining and Dressing Point Source Category (40 CFR Part 440) are not authorized by this permit.

Discharges that come in contact with overburden and waste rock are subject to 40 CFR Part 440, providing: **the** discharges drain to a point source (either naturally or as a result of intentional diversion), and they combine with mine drainage that is otherwise regulated under 40 CFR Part 440. Discharges from overburden and waste rock can be covered under this permit if they are composed entirely of stormwater and do not combine with sources of mine drainage that are subject to 40 CFR Part 440.

C. Special Conditions. Prohibition of nonstormwater discharges. In addition to **the** general prohibition of nonstormwater discharges in Part I B 1, **the** following discharge is not covered by this permit: adit drainage. Contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events are also not authorized by this permit.

D. Special definitions. **The** following definitions are not intended to supersede **the** definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii), and are only for this section of **the** general permit:

"Active metal mining facility" means a place where work or other related activity to **the** extraction, removal, or recovery of metal ore is being conducted. For surface mines, this definition does not include any land where grading has returned **the** earth to a desired contour and reclamation has begun.

"Active phase" means activities including **the** extraction, removal, or recovery of metal ore. For surface mines, this definition does not include any land where grading has returned **the** earth to a desired contour and reclamation has begun.

"Construction phase" means **the** building of site access roads and removal of overburden and waste rock to expose mineable minerals. **The** construction phase is not considered part of "mining operations."

"Exploration phase" means exploration and land disturbance activities to determine **the** financial viability of a site. **The** exploration phase is not considered part of "mining operations."

"Final stabilization" means a site or portion of a site where all applicable federal and state reclamation requirements have been implemented.

"Inactive metal mining facility" means a site or portion of a site where metal mining or milling occurred in **the** past but is not an active facility as defined in this permit, and where **the** inactive portion is not covered by an active mining permit issued by **the** applicable federal or state agency. An inactive metal mining facility has an identifiable owner or operator. Sites where mining claims are being maintained ~~prior to~~ **before** disturbances associated with **the** extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for **the** sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require a VPDES industrial stormwater permit.

"Mining operation" means **the** active and temporarily inactive phases and **the** reclamation phase, but excludes **the** exploration and construction phases.

"Reclamation phase" means activities undertaken, in compliance with applicable mined land reclamation requirements, following **the** cessation of **the** "active phase," intended to return **the** land to an appropriate post-mining land use in order to meet applicable federal and state reclamation requirements. **The** reclamation phase is considered part of "mining operations."

"Temporarily inactive metal mining facility" means a site or portion of a site where metal mining or milling occurred in **the** past but currently are not being actively undertaken, and **the** facility is covered by an active mining permit issued by **the** applicable federal or state agency.

E. Clearing, grading, and excavation activities. Clearing, grading, and excavation activities being conducted as part of **the** exploration and construction phase of mining activities are covered under this permit.

1. Management practices for clearing, grading, and excavation activities.

a. Selecting and installing control measures. A combination of erosion and sedimentation control measures are required to achieve maximum pollutant prevention and removal. All control measures shall be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

b. Good housekeeping. Litter, debris, and chemicals shall be prevented from becoming a pollutant source in stormwater discharges.

c. Retention and detention of stormwater runoff. For drainage locations serving more than one acre, sediment basins or temporary sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of **the** development area unless a sediment

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basin providing storage for a calculated volume of runoff from a two-year, 24-hour storm or 3,600 cubic feet of storage per acre drained is provided. Sediment shall be removed from sediment traps or sedimentation ponds when **the** design capacity has been reduced by 50%.

d. Temporary stabilization of disturbed areas. Stabilization measures shall be initiated immediately in portions of **the** site where development activities have temporarily ceased, but in no case more than 14 days after **the** clearing, grading, and excavation activities in that portion of **the** site have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after mining, exploration, or construction activity has temporarily ceased, final temporary vegetative stabilization measures shall be initiated as soon as practicable. Until temporary vegetative stabilization is achieved, interim measures ~~such as (i.e., erosion control blankets with an appropriate seed base and tackifiers)~~ shall be ~~employed~~ used. In areas of **the** site where exploration or construction has permanently ceased ~~prior to~~ before active mining, temporary stabilization measures shall be implemented to minimize mobilization of sediment or other pollutants until ~~such time as~~ the active mining phase ~~commences~~ begins.

2. Requirements for inspection of clearing, grading, and excavation activities.

a. Inspection frequency. Inspections shall be conducted at least once every seven calendar days or at least once every 14 calendar days and within 24 hours of **the** end of a storm event of 0.5 inches or greater. Inspection frequency may be reduced to at least once every month if **the** entire site is temporarily stabilized, if runoff is unlikely due to winter (e.g., site is covered with snow or ice) or frozen conditions, or construction is occurring during seasonal dry periods in arid areas and semi-arid areas.

b. Location of inspections. Inspections shall include all areas of **the** site disturbed by clearing, grading, and excavation activities and areas used for storage of materials that are exposed to precipitation. Sedimentation and erosion control measures identified in **the** SWPPP shall be observed to ensure proper operation. Discharge locations shall be inspected to ~~ascertain~~ determine whether erosion control measures are effective in preventing significant impacts to surface waters, where accessible. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to **the** extent that ~~such~~ inspections are practicable. Locations where vehicles enter or exit **the** site shall be inspected for evidence of off-site sediment tracking.

c. Inspection reports. For each inspection required in this subsection, an inspection report shall be completed. At a minimum, **the** inspection report shall include:

- (1) **The** inspection date;
- (2) Names, titles, and qualifications of ~~personnel~~ staff making **the** inspection;
- (3) Weather information for **the** period since **the** last inspection (or note if it is **the** first inspection) including a best estimate of **the** beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;
- (4) Weather information and a description of any discharges occurring at **the** time of **the** inspection;
- (5) Locations of discharges of sediment or other pollutants from **the** site;
- (6) Locations of control measures that need to be maintained;
- (7) Locations of control measures that failed to operate as designed or proved inadequate for a particular location;
- (8) Locations where additional control measures are needed that did not exist at **the** time of inspection; and
- (9) Corrective actions required, including any changes to **the** SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this section shall be retained as part of **the** SWPPP for at least three years from **the** date that permit coverage expires or is terminated. **The** inspection reports shall identify any incidents of noncompliance with **the** permit conditions. Where a report does not identify any incidents of noncompliance, **the** report shall contain a certification that **the** clearing, grading, and excavation activities are in compliance with **the** SWPPP and this permit.

3. Requirements for cessation of clearing, grading, and excavation activities.

a. Inspections and maintenance. Inspections and maintenance of control measures, including BMPs, associated with clearing, grading, and excavation activities being conducted as part of **the** exploration and construction phase of a mining operation shall continue until final stabilization has been achieved on all portions of **the** disturbed area, or until **the** commencement of **the** active mining phase for those areas that have been temporarily stabilized as a precursor to mining.

b. Final stabilization. Stabilization measures shall be initiated immediately in portions of **the** site where exploration or construction activities have permanently ceased, but in no case more than 14 days after **the** exploration or construction activity in that portion of **the** site has permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after exploration or construction activity has permanently

ceased, final vegetative stabilization measures shall be initiated as soon as possible. Until final stabilization is achieved temporary stabilization measures, ~~such as~~ (e.g., erosion control blankets with an appropriate seed base and tackifiers,) shall be used.

F. SWPPP requirements for active, inactive, and temporarily inactive metal mining facilities and sites undergoing reclamation. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Activities at the facility. A description of the mining and associated activities taking place at the site that can potentially affect stormwater discharges covered by this permit. The description shall include a general description of the location of the site relative to major transportation routes and communities.

b. Site map. The site map shall identify the locations of the following, as appropriate: mining and milling site boundaries; access and haul roads; an outline of the drainage areas of each stormwater outfall within the facility, and an indication of the types of discharges from the drainage areas; locations of all permitted discharges covered under an individual VPDES permit; outdoor equipment storage, fueling, and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; outdoor storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils, or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles and ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage and process water; surface waters; boundary of tributary areas that are subject to effluent limitations guidelines; and locations of reclaimed areas.

2. Summary of potential pollutant sources. For each area of the mine or mill site where stormwater discharges associated with industrial activities occur, the SWPPP shall identify the types of pollutants likely to be present in significant amounts (e.g., heavy metals, sediment). The following factors shall be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood of contact with stormwater; vegetation of site, if any; and history of significant leaks and spills of toxic or hazardous pollutants. A summary of any existing ore or waste rock and overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste rock and overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.

3. Stormwater controls.

a. Routine facility inspections. Except for areas subject to clearing, grading, and excavation activities subject to subdivision E 2 of this section, sites shall be inspected at least quarterly unless adverse weather conditions make the site inaccessible. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

b. Employee training. Employee training shall be conducted at least annually at active mining and temporarily inactive sites. All employee training shall be documented in the SWPPP.

c. Structural control measures. In addition to the control measures required by Part III B 4, each of the following control measures shall be documented in the SWPPP. The potential pollutants identified in subdivision 2 of this subsection shall determine the priority and appropriateness of the control measures selected. If control measures are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them shall be included in the SWPPP.

(1) Stormwater diversion. A description of how and where stormwater will be diverted away from potential pollutant sources to prevent stormwater contamination. Control measures shall include one or more of the following:

- (a) Interceptor dikes and swales;
- (b) Diversion dikes, curbs, and berms;
- (c) Pipe slope drains;
- (d) Subsurface drains;
- (e) Drainage and stormwater conveyance systems; or
- (f) Equivalent measures.

(2) Capping. When capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source shall be identified.

(3) Treatment. If treatment of a stormwater discharge is necessary to protect water quality, include a description of the type and location of stormwater treatment that will be used. Stormwater treatments include the following: chemical or physical systems, oil and water separators, artificial wetlands, etc. The permittee is encouraged to use both passive and active treatment of stormwater runoff. Treated runoff may be discharged as a stormwater source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

(4) Certification of discharge testing. The permittee shall test or evaluate all outfalls covered under this permit for the presence of specific mining-related nonstormwater discharges such as (e.g., seeps or adit discharges or discharges subject to effluent limitations guidelines (e.g.,

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40 CFR Part 440), such as mine drainage or process water}. The permittee may certify in the SWPPP that a particular discharge composed of commingled stormwater and nonstormwater is covered under a separate VPDES permit; and that permit subjects the nonstormwater portion to effluent limitations prior to before any commingling. This certification shall identify the nonstormwater discharges, the applicable VPDES permits, the effluent limitations placed on the nonstormwater discharge by the permits, and the points at which the limitations are applied.

G. Termination of permit coverage.

1. Termination of permit coverage for sites reclaimed after December 17, 1990. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in subdivision 2 of this subsection.

2. Termination of permit coverage for sites reclaimed before December 17, 1990. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (i) stormwater runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards; (ii) soil-disturbing activities related to mining at the sites or portion of the site have been completed; (iii) the site or portion of the site has been stabilized to minimize soil erosion; and (iv) as appropriate depending on location, size, and the potential to contribute pollutants to stormwater discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

H. Inactive and unstaffed sites. Permittees in Sector G seeking to exercise a waiver from the quarterly visual monitoring and routine facility inspection requirements for inactive and unstaffed sites (including temporarily inactive sites) are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Part I A 4.

This exemption is conditioned on the following:

1. If circumstances change and the facility becomes active or staffed, this exception no longer applies and the permittee

shall immediately begin complying with the quarterly visual assessment and routine facility inspection requirements; and

2. The board department retains the authority to revoke this exemption and the monitoring waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions in subdivisions 1 and 2 of this subsection, if a facility is inactive and unstaffed, the permittee is waived from the requirement to conduct quarterly visual monitoring and routine facility inspections. The permittee is not waived from conducting at least one routine facility inspection per calendar year. The board department encourages the permittee to inspect the site more frequently when there is reason to believe that severe weather or natural disasters may have damaged control measures.

I. Benchmark monitoring and reporting requirements. There are no benchmark monitoring requirements for inactive and unstaffed sites that have received a waiver in accordance with Part I A 4 (Inactive and unstaffed sites).

1. Copper ore mining and dressing facilities. Active copper ore mining and dressing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 150-1 below.

2. Discharges from waste rock and overburden piles at active sites. Discharges from waste rock and overburden piles at active sites shall be analyzed for the parameters listed in Table 150-2. Facilities shall also monitor for the parameters listed in Table 150-3. The director may also notify the facility that additional monitoring must be performed to accurately characterize the quality and quantity of pollutants discharged from the waste rock or overburden piles.

Table 150-1 Sector G – Benchmark Monitoring Requirements - Copper Ore Mining and Dressing Facilities	
Pollutants of Concern	Benchmark Concentration
Active Copper Ore Mining and Dressing Facilities (SIC Code 1021)	
Total Suspended Solids (TSS)	100 mg/L

Table 150-2 Sector G – Benchmark Monitoring Requirements - Discharges from Waste Rock and Overburden Piles from Active Ore Mining or Dressing Facilities	
Pollutants of Concern	Benchmark Concentration
Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium;	

Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)	
Total Suspended Solids (TSS)	100 mg/L
Turbidity (NTUs)	50 NTU
pH	6.0 - 9.0 s.u.
Hardness (as CaCO ₃)	no benchmark value
Total Recoverable Antimony	640 µg/L
Total Recoverable Arsenic	50 <u>150</u> µg/L
Total Recoverable Beryllium	130 µg/L
Total Recoverable Cadmium	2.4 <u>1.8</u> µg/L
Total Recoverable Copper	48 <u>13</u> µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Mercury	1.4 µg/L
Total Recoverable Nickel	470 µg/L
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 <u>3.2</u> µg/L
Total Recoverable Zinc	120 µg/L

Table 150-3
Sector G – Additional Monitoring Requirements for Discharges from Waste Rock and Overburden Piles from Active Ore Mining or Dressing Facilities

Type of Ore Mined	Pollutants of Concern		
	TSS (mg/L)	pH	Metals, Total Recoverable
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Iron.
Mercury Ore	X	X	Nickel (H).
Iron Ore	X	X	Iron (Dissolved).

Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H).
Uranium, Radium and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total Recoverable), Uranium, Zinc (H).

Note: (H) indicates that hardness shall also be measured when this pollutant is measured.

9VAC25-151-160. Sector H - Coal mines and coal mining-related facilities.

A. Discharges covered under this section. **The** requirements listed under this section apply to stormwater discharges associated with industrial activity from coal mining-related areas (SIC Major Group 12) if (i) they are not subject to effluent limitations guidelines under 40 CFR Part 434 or (ii) they are not subject to **the** standards of **the** Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) and **the** Virginia Department of Mines, Minerals and Energy's individual permit requirements.

The requirements of this section shall apply to stormwater discharges from coal mining-related activities exempt from SMCRA, including **the** public financed exemption, **the** 16-2/3% exemption, **the** private use exemption, **the** under 250 tons exemption, **the** nonincidental tipple exemption, and **the** exemption for coal piles and preparation plants associated with **the** end user. Stormwater discharges from **the** following portions of eligible coal mines and coal mining related facilities may be eligible for this permit: haul roads (nonpublic roads on which coal or coal refuse is conveyed), access roads (nonpublic roads providing light vehicular traffic within **the** facility property and to public roadways), railroad spurs, sidings, and internal haulage lines (rail lines used for hauling coal within **the** facility property and to off-site commercial railroad lines or loading areas); conveyor belts, chutes, and aerial tramway haulage areas (areas under and around coal or refuse conveyor areas, including transfer stations); and equipment storage and maintenance yards, coal handling buildings and structures, coal tipples, coal loading facilities, and inactive coal mines and related areas (abandoned and other

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inactive mines, refuse disposal sites, and other mining-related areas).

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general prohibition of nonstormwater discharges in Part I B 1, the following discharges are not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

C. SWPPP requirements. In addition to the requirements of Part III, the SWPPP shall include at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff:

- (1) Haul and access roads;
- (2) Railroad spurs, sliding, and internal hauling lines;
- (3) Conveyor belts, chutes, and aerial tramways;
- (4) Equipment storage and maintenance yards;
- (5) Coal handling buildings and structures;
- (6) Inactive mines and related areas;
- (7) Acidic spoil, refuse or unreclaimed disturbed areas; and
- (8) Liquid storage tanks containing pollutants such as (e.g., caustics, hydraulic fluids, and lubricants).

b. Summary of potential pollutant sources. A description of the potential pollutant sources from the following activities: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid, or other potential harmful liquids; and loading or temporary storage of acidic refuse or spoil.

2. Stormwater controls.

a. Good housekeeping. As part of the facility's good housekeeping program required by Part III B 4 b (1), the permittee shall consider the following: using sweepers, covered storage, and watering of haul roads to minimize dust generation; and conservation of vegetation (where possible) to minimize erosion.

b. Preventive maintenance. The permittee shall also perform inspections of storage tanks and pressure lines for fuels, lubricants, hydraulic fluid, or slurry to prevent leaks due to deterioration or faulty connections; or other equivalent measures.

c. Routine facility inspections. Sites shall be inspected at least quarterly unless adverse weather conditions make the

site inaccessible. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

D. Inactive and unstaffed sites. Permittees in Sector H seeking to exercise a waiver from the quarterly visual monitoring and routine facility inspection requirements for inactive and unstaffed sites (including temporarily inactive sites) are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Part I A 4.

This exemption is conditioned on the following:

1. If circumstances change and the facility becomes active or staffed, this exception no longer applies and the permittee shall immediately begin complying with the quarterly visual monitoring requirements and routine facility inspection requirements; and
2. The board department retains the authority to revoke this exemption and the monitoring waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions in subdivisions 1 and 2 of this subsection, if a facility is inactive and unstaffed, the permittee is waived from the requirement to conduct quarterly visual monitoring and routine facility inspections. The permittee is not waived from conducting a minimum of one annual site inspection. The board department encourages the permittee to inspect the site more frequently when there is reason to believe that severe weather or natural disasters may have damaged control measures.

E. Benchmark monitoring and reporting requirements. Coal mining facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 160. There are no benchmark monitoring requirements for inactive and unstaffed sites that have received a waiver in accordance with Part I A 4 (Inactive and unstaffed sites).

Table 160 Sector H - Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Coal Mines and Related Areas (SIC Codes 1221-1241)	
Total Recoverable Aluminum	750 1,100 µg/L
Total Recoverable Iron	1.0 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-180. Sector K - Hazardous waste treatment, storage, or disposal facilities.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges

associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Industrial Activity Code "HZ"). Disposal facilities that have been properly closed and capped, or clean closed, and have no significant materials exposed to stormwater, do not require this permit.

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general prohibition of nonstormwater discharges in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated groundwater, laboratory-derived wastewater and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated stormwater" means stormwater that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in this section. Some specific areas of a landfill that may produce contaminated stormwater include the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to before landfilling.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine, or a cave as these terms are defined in 40 CFR 257.2, 40 CFR 258.2 and 40 CFR 260.10.

"Landfill wastewater," as defined in 40 CFR Part 445 (Landfills Point Source Category), means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated stormwater, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated stormwater, and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated stormwater" means stormwater that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated stormwater includes stormwater that flows off the cap, cover, intermediate cover, daily cover, or final cover of the landfill.

D. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart A, the numeric limitations in Table 180-1 apply to contaminated stormwater discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) and 265 (Subpart N) except for any of the following facilities:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;
2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;
3. Landfills operated in conjunction with centralized waste treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or
4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 180-1 Sector K – Numeric Effluent Limitations		
Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ") Subject to the Provisions of 40 CFR Part 445 Subpart A.		
Biochemical Oxygen Demand (BOD ₅)	220 mg/L	56 mg/L

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Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.042 mg/L	0.019 mg/L
Aniline	0.024 mg/L	0.015 mg/L
Benzoic Acid	0.119 mg/L*	0.073 mg/L
Naphthalene	0.059 mg/L	0.022 mg/L
p-Cresol	0.024 mg/L	0.015 mg/L
Phenol	0.048 mg/L	0.029 mg/L
Pyridine	0.072 mg/L	0.025 mg/L
Arsenic (Total)	1.1 mg/L	0.54 mg/L
Chromium (Total)	1.1 mg/L	0.46 mg/L
Zinc (Total)	0.535 mg/L*	0.296 mg/L*
pH	Within the range of 6.0 - 9.0 s.u.	
*These effluent limitations are three significant digits for reporting purposes.		

E. Benchmark monitoring and reporting requirements. Permittees with hazardous waste treatment, storage, or disposal facilities (TSDFs) are required to monitor their stormwater discharges for the pollutants of concern listed in Table 180-2. These benchmark monitoring concentrations apply to stormwater discharges associated with industrial activity other than contaminated stormwater discharges from landfills subject to the numeric effluent limitations set forth in Table 180-1.

Table 180-2 Sector K – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ")	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Organic Carbon (TOC)	110 mg/L
Total Recoverable Arsenic	50 150 µg/L
Total Recoverable Cadmium	2.4 1.8 µg/L
Total Cyanide	22 µg/L

Total Recoverable Lead	120 µg/L
Total Magnesium	64 µg/L
Total Recoverable Mercury	1.4 µg/L
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 3.2 µg/L

9VAC25-151-190. Sector L - Landfills, land application sites and open dumps.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from waste disposal at landfills, land application sites, and open dumps that receive or have received industrial wastes (Industrial Activity Code "LF"), including sites subject to regulation under Subtitle D of the Resource Conservation and Recovery Act (RCRA). Landfills, land application sites, and open dumps that have stormwater discharges from other types of industrial activities such as (e.g., vehicle maintenance, truck washing, and recycling) may be subject to additional requirements specified elsewhere in this permit. This permit does not cover discharges from landfills that receive only municipal wastes. Landfills (including landfills in "post-closure care") that have been properly closed and capped in accordance with 9VAC20-81-160 and 9VAC20-81-170 and have no significant materials exposed to stormwater do not require this permit. Landfills closed in accordance with regulations or permits in effect prior to before December 21, 1988, do not require this permit, unless significant materials are exposed to stormwater.

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated stormwater" means stormwater that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Some areas of a landfill that may produce contaminated stormwater include, but are not limited to, the working face of an active landfill; the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to before landfilling.

"Landfill wastewater," as defined in 40 CFR Part 445 (Landfills Point Source Category), means all wastewater associated with, or produced by, landfilling activities except

for sanitary wastewater, noncontaminated stormwater, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated stormwater, and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from ~~such~~ the waste.

"Noncontaminated stormwater" means stormwater that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined ~~above~~. Noncontaminated stormwater includes stormwater that flows off the cap, intermediate cover, or final cover of the landfill.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the open dump criteria in 9VAC20-81-45.

D. Stormwater controls. In addition to the requirements in Part III, the SWPPP shall include, at a minimum, the following items:

1. Preventive maintenance program. As part of the preventive maintenance program, the permittee shall maintain all elements of leachate collection and treatment systems to prevent commingling of leachate with stormwater and the integrity and effectiveness of any intermediate or final cover (including making repairs to the cover as necessary), to minimize the effects of settlement, sinking, and erosion.

2. Routine facility inspections.

- a. Inspections of active sites. Operating landfills, open dumps, and land application sites shall be inspected at least once every seven days. Qualified ~~personnel~~ staff shall inspect areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of materials or wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter and exit the site. Erosion and sediment control measures shall be observed to ensure they are operating correctly. For stabilized sites and areas where land application has been completed, inspections shall be conducted at least once every month.

- b. Inspections of inactive sites. Inactive landfills, open dumps, and land application sites shall be inspected at least quarterly. Qualified ~~personnel~~ staff shall inspect landfill (or open dump) stabilization and structural erosion

control measures and leachate collection and treatment systems and all closed land application areas.

3. Recordkeeping and internal reporting procedures. Landfill and open dump owners shall provide for a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. Land application site owners shall track the types and quantities of wastes applied in specific areas.

4. Annual outfall evaluation for unauthorized discharges. The evaluation shall also be conducted for the presence of leachate and vehicle washwater.

5. Sediment and erosion control plan. Landfill and open dump owners shall provide for temporary stabilization of materials stockpiled for daily, intermediate, and final cover. Stabilization practices to consider include temporary seeding, mulching, and placing geotextiles on the inactive portions of the stockpiles. Landfill and open dump owners shall provide for temporary stabilization of inactive areas of the landfill or open dump ~~which that~~ have an intermediate cover but no final cover. Landfill and open dump owners shall provide for temporary stabilization of any landfill or open dumping areas which have received a final cover until vegetation has established itself. Land application site owners shall also stabilize areas where waste application has been completed until vegetation has been established.

E. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart B, the numeric limitations in Table 190-1 apply to contaminated stormwater discharges from municipal solid waste landfills (MSWLFs) that have not been closed in accordance with 40 CFR 258.60, and contaminated stormwater discharges from those landfills that are subject to the provisions of 40 CFR Part 257 (these include construction and debris landfills and industrial landfills) except for discharges from any of the following facilities:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with centralized waste treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part

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if **the** CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles **the** wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when **the** landfill receives wastes from public service activities so long as **the** company owning **the** landfill does not receive a fee or other remuneration for **the** disposal service.

Table 190-1 Sector L – Numeric Effluent Limitations		
Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Landfills (Industrial Activity Code "LF") that are Subject to the Requirements of 40 CFR Part 445 Subpart B.		
Biochemical Oxygen Demand (BOD ₅)	140 mg/L	37 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.033 mg/L	0.016 mg/L
Benzoic Acid	0.12 mg/L	0.071 mg/L
p-Cresol	0.025 mg/L	0.014 mg/L
Phenol	0.026 mg/L	0.015 mg/L
Zinc (Total)	0.20 mg/L	0.11 mg/L
pH	Within the range of 6.0 - 9.0 s.u.	

F. Benchmark monitoring and reporting requirements. Landfills, land application, and open dump sites are required to monitor their stormwater discharges for **the** pollutants of concern listed in Table 190-2. These benchmark monitoring concentrations apply to stormwater discharges associated with industrial activity other than contaminated stormwater discharges from landfills subject to **the** numeric effluent limitations set forth in Table 190-1.

Table 190-2 Sector L – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF").	
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-200. Sector M - Automobile salvage yards.

A. Discharges covered under this section. **The** requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities engaged in dismantling or wrecking used motor vehicles for parts recycling or resale, and for scrap (SIC Code 5015).

B. Stormwater controls. In addition to **the** requirements of Part III, **the** SWPPP shall include, at a minimum, **the** following items:

1. Spill and leak prevention procedures. All vehicles that are intended to be dismantled shall be properly drained of all fluids ~~prior to~~ before being dismantled or crushed, or other equivalent means shall be taken to prevent leaks or spills of fluids upon arrival at **the** site, or as soon thereafter as feasible. All drained fluids shall be managed to minimize leaks or spills.

2. Inspections. Upon arrival at **the** site, or as soon thereafter as feasible, vehicles shall be inspected for leaks. Any equipment containing oily parts, hydraulic fluids, any other types of fluids, or mercury switches shall be inspected at least quarterly (four times per year) for signs of leaks. All vessels, containers, or tanks and areas where hazardous materials and general automotive fluids are stored, including mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze, shall be inspected at least quarterly for leaks. Quarterly inspection records shall be maintained with **the** SWPPP.

3. Employee training. Employee training shall, at a minimum, address **the** following areas when applicable to a facility: proper handling (collection, storage, and disposal) of oil, used mineral spirits, antifreeze, mercury switches, and solvents.

4. Management of runoff. **The** permittee shall implement control measures to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff to minimize pollutants in discharges from **the** facility. **The** following management practices shall be used to prevent or reduce **the** discharge of pollutants to surface waters:

- Berms or drainage ditches on **the** property line used to help prevent run-on from neighboring properties;
- Berms for uncovered outdoor storage of oily parts and engine blocks;
- Aboveground liquid storage;
- The** installation of detention ponds, filtering devices, or oil/water separators; and
- Another control measure used to prevent or reduce **the** discharge of pollutants to surface waters.

C. Benchmark monitoring and reporting requirements. Automobile salvage yards are required to monitor their stormwater discharges for **the** pollutants of concern listed in Table 200.

Table 200
Sector M – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Automobile Salvage Yards (SIC Code 5015)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 1,100 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L

9VAC25-151-210. Sector N - Scrap recycling and waste recycling facilities and material recovery facilities (MRF).

A. Discharges covered under this section. **The** requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities typically identified as SIC code 5093 that are engaged in **the** processing, reclaiming, and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass, animal hides ~~(these types of activities are typically identified as SIC Code 5093)~~, and facilities that are engaged in reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits, and industrial solvents ~~(also identified as SIC Code 5093)~~. Separate permit requirements have been established for recycling facilities that only receive source-separated recyclable materials primarily from nonindustrial and residential sources ~~(also identified as SIC Code 5093)~~ (e.g., common consumer products including paper, newspaper, glass, cardboard, plastic containers, aluminum, and tin cans).

Separate permit requirements have also been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap (SIC Code 4499, limited to those listed; for others in SIC Code 4499 not listed in this subsection, see Sector Q (9VAC25-151-240)).

B. Special conditions. Prohibition of nonstormwater discharges. Discharges from containment areas in **the** absence of a storm event are prohibited unless covered by a separate VPDES permit.

C. SWPPP requirements. In addition to **the** requirements of Part III, **the** following items are applicable:

1. Scrap recycling and waste recycling facilities (nonsource-separated, nonliquid recyclable materials). **The** following SWPPP special conditions have been established for facilities that receive, process, and do wholesale distribution of nonliquid recyclable wastes (e.g., ferrous and nonferrous metals, plastics, glass, cardboard, and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that

only accept recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable and waste material control program. **The** SWPPP shall include a recyclable and waste material inspection program to minimize **the** likelihood of receiving materials that may be significant pollutant sources to stormwater discharges. Control measures shall include one or more of **the** following:

(1) Provide information and education flyers, brochures, and pamphlets to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids ~~prior to before~~ delivery to **the** facility (e.g., from vehicles and equipment engines, radiators, and transmissions, oil-filled transformers, and individual containers or drums), and on removal of mercury switches ~~prior to before~~ delivery to **the** facility;

(2) Establish procedures to minimize **the** potential of any residual fluids from coming in contact with precipitation or runoff;

(3) Establish procedures for accepting scrap lead-acid batteries. Additional requirements for **the** handling, storage and disposal or recycling of batteries are contained in **the** scrap lead-acid battery program provisions in subdivision 2 f of this subsection;

(4) Provide training targeted for those ~~personnel staff~~ engaged in **the** inspection and acceptance of inbound recyclable materials; or

(5) Establish procedures to ensure that liquid wastes, including used oil, are stored in materially compatible and nonleaking containers and disposed or recycled in accordance with all requirements under **the** Resource Conservation and Recovery Act (RCRA), and other state or local requirements.

b. Scrap and waste material stockpiles and storage (outdoor). **The** SWPPP shall describe measures and controls to minimize contact of stormwater runoff with stockpiled materials, processed materials, and nonrecyclable wastes. Control measures shall include one or more of **the** following:

(1) Permanent or semipermanent covers;

(2) **The** use of sediment traps, vegetated swales and strips, catch basin filters, and sand filters to facilitate settling or filtering of pollutants;

(3) Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts, and surface grading;

(4) Silt fencing;

(5) Oil/water separators, sumps, and dry adsorbents for areas where potential sources of residual fluids are stockpiled (e.g., automotive engine storage areas); or

(6) Another control measure used to prevent or reduce **the** discharge of pollutants to surface waters.

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c. Stockpiling of turnings exposed to cutting fluids (outdoor storage). **The** SWPPP shall implement measures necessary to minimize contact of surface runoff with residual cutting fluids. Control measures shall include one or more of **the** following:

(1) Storage of all turnings exposed to cutting fluids under some form of permanent or semipermanent cover. Stormwater discharges from these areas are permitted provided **the** runoff is first treated by an oil/water separator or its equivalent. Procedures to collect, handle, and dispose or recycle residual fluids that may be present shall be identified in **the** SWPPP; or

(2) Establish dedicated containment areas for all turnings that have been exposed to cutting fluids. Stormwater runoff from these areas can be discharged provided:

(a) **The** containment areas are constructed of either concrete, asphalt, or other equivalent type of impermeable material;

(b) There is a barrier around **the** perimeter of **the** containment areas to prevent contact with stormwater runoff (e.g., berms, curbing, and elevated pads, ~~etc.~~);

(c) There is a drainage collection system for runoff generated from containment areas;

(d) There is a schedule to maintain **the** oil/water separator (or its equivalent); and

(e) Procedures are identified for **the** proper disposal or recycling of collected residual fluids.

d. Scrap and waste material stockpiles and storage (covered or indoor storage). **The** SWPPP shall address measures and controls to minimize contact of residual liquids and particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. Control measures shall include one or more of **the** following:

(1) Good housekeeping measures, including **the** use of dry absorbent or wet vacuum cleanup methods, to contain, dispose, or recycle residual liquids originating from recyclable containers, or mercury spill kits from storage of mercury switches;

(2) Prohibiting **the** practice of allowing washwater from tipping floors or other processing areas from discharging;

(3) Disconnecting or sealing off all floor drains if necessary to prevent a discharge; or

(4) Another control measure used to prevent or reduce **the** discharge of pollutants to surface waters.

e. Scrap and recyclable waste processing areas. **The** SWPPP shall include measures and controls to minimize surface runoff from coming in contact with scrap processing equipment. In **the** case of processing equipment that generate visible amounts of particulate residue (e.g., shredding facilities), **the** SWPPP shall describe measures to minimize **the** contact of residual

fluids and accumulated particulate matter with runoff (i.e., through good housekeeping, and preventive maintenance, ~~etc.~~). Control measures shall include one or more of **the** following:

(1) A schedule of regular inspections of equipment for leaks, spills, malfunctioning, worn, or corroded parts or equipment;

(2) A preventive maintenance program for processing equipment;

(3) Removal of mercury switches from **the** hood and trunk lighting units, and removal of anti-lock brake system units containing mercury switches;

(4) Use of dry-absorbents or other cleanup practices to collect and to dispose of or recycle spilled or leaking fluids, or use of mercury spill kits for spills from storage of mercury switches;

(5) Installation of low-level alarms or other equivalent protection devices on unattended hydraulic reservoirs over 150 gallons in capacity. Alternatively, provide secondary containment with sufficient volume to contain **the** entire volume of **the** reservoir;

(6) Containment or diversion structures ~~such as (e.g.,~~ dikes, berms, culverts, trenches, elevated concrete pads, and grading) to minimize contact of stormwater runoff with outdoor processing equipment or stored materials;

(7) Oil/water separators or sumps;

(8) Permanent or semipermanent covers in processing areas where there are residual fluids and grease;

(9) Retention and detention basins or ponds, sediment traps, vegetated swales or strips, to facilitate pollutant settling and filtration;

(10) Catch basin filters or sand filters; or

(11) Another control measure used to prevent or reduce **the** discharge of pollutants to surface waters.

f. Scrap lead-acid battery program. **The** SWPPP shall address measures and controls for **the** proper handling, storage, and disposal of scrap lead-acid batteries. Control measures shall include one or more of **the** following:

(1) Segregate scrap lead-acid batteries from other scrap materials and store under cover;

(2) A description of procedures and measures for **the** proper handling, storage, and disposal of cracked or broken batteries;

(3) A description of measures to collect and dispose of leaking lead-acid battery fluid;

(4) A description of measures to minimize and, whenever possible, eliminate exposure of scrap lead-acid batteries to precipitation or runoff; or

(5) A description of employee training for **the** management of scrap batteries.

g. Spill prevention and response procedures. **The** SWPPP shall include measures to minimize stormwater contamination at loading and unloading areas, and from equipment or container failures. Control measures shall include one or more of **the** following:

(1) Description of spill prevention and response measures to address areas that are potential sources of fluid leaks or spills;

(2) Immediate containment and cleanup of spills and leaks. If malfunctioning equipment is responsible for **the** spill or leak, repairs shall also be conducted as soon as possible;

(3) Cleanup procedures shall be identified in **the** SWPPP, including **the** use of dry absorbents. Where dry absorbent cleanup methods are used, an adequate supply of dry absorbent material shall be maintained on-site. Used absorbent material shall be disposed of properly;

(4) Drums containing liquids, especially oil and lubricants, shall be stored indoors, in a bermed area, in overpack containers or spill pallets, or in similar containment devices;

(5) Overfill prevention devices shall be installed on all fuel pumps or tanks;

(6) Drip pans or equivalent measures shall be placed under any leaking piece of stationary equipment until **the** leak is repaired. **The** drip pans shall be inspected for leaks and potential overflow and all liquids properly disposed of in accordance with RCRA requirements; or

(7) An alarm or pump shut off system shall be installed on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in order to prevent draining **the** tank contents ~~in the event of~~ due to a line break. Alternatively, **the** equipment may have a secondary containment system capable of containing **the** contents of **the** hydraulic reservoir plus adequate freeboard for precipitation. A mercury spill kit shall be used for any release of mercury from switches, anti-lock brake systems, and switch storage areas.

h. Inspection program. All designated areas of **the** facility and equipment identified in **the** SWPPP shall be inspected at least quarterly. **The** requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

i. Supplier notification program. **The** SWPPP shall include a program to notify major suppliers which scrap materials will not be accepted at **the** facility or are only accepted under certain conditions.

2. Waste recycling facilities (liquid recyclable materials).

a. Waste material storage (indoor). **The** SWPPP shall include measures and controls to eliminate contact between residual liquids from waste materials stored indoors and surface runoff. **The** SWPPP may refer to

applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112. Control measures shall include one or more of **the** following:

(1) Procedures for material handling (including labeling and marking);

(2) A sufficient supply of dry-absorbent materials or a wet vacuum system to collect spilled or leaked materials (spilled or leaking mercury should never be vacuumed);

(3) An appropriate containment structure, ~~such as~~ (e.g., trenches, curbing, gutters, or other equivalent measures); or

(4) A drainage system, including appurtenances (e.g., pumps or ejectors, or manually operated valves), to handle discharges from diked or bermed areas. Drainage shall be discharged to an appropriate treatment facility, sanitary sewer system, or otherwise disposed of properly. Discharges from these areas may require coverage under a separate VPDES permit or industrial user permit under **the** pretreatment program.

b. Waste material storage (outdoor). **The** SWPPP shall describe measures and controls to minimize contact between stored residual liquids and precipitation or runoff. **The** SWPPP may refer to applicable portions of other existing plans ~~such as~~ (e.g., SPCC plans required under 40 CFR Part 112). Discharges of precipitation from containment areas containing used oil shall also be in accordance with applicable sections of 40 CFR Part 112. Control measures shall include one or more of **the** following:

(1) Appropriate containment structures (e.g., dikes, berms, curbing, pits) to store **the** volume of **the** largest single tank, with sufficient extra capacity for precipitation;

(2) Drainage control and other diversionary structures;

(3) For storage tanks, provide corrosion protection, or leak detection systems; or

(4) Dry-absorbent materials or a wet vacuum system to collect spills.

c. Truck and rail car waste transfer areas. **The** SWPPP shall describe measures and controls to minimize pollutants in discharges from truck and rail car loading and unloading areas. **The** SWPPP shall also address measures to clean up minor spills and leaks resulting from **the** transfer of liquid wastes. Control measures shall include one or more of **the** following:

(1) Containment and diversionary structures to minimize contact with precipitation or runoff;

(2) Use of dry cleanup methods, wet vacuuming, roof coverings, or runoff controls; or

(3) Another control measure used to prevent or reduce **the** discharge of pollutants to surface waters.

d. Inspections. Inspections shall be made quarterly and shall also include all areas where waste is generated,

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received, stored, treated, or disposed that are exposed to either precipitation or stormwater runoff. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

3. Recycling facilities (source separated materials). The following SWPPP special conditions have been established for facilities that receive only source-separated recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable material control. The SWPPP shall include an inbound materials inspection program to minimize the likelihood of receiving nonrecyclable materials (e.g., hazardous materials) that may be a significant source of pollutants in surface runoff. Control measures shall include one or more of the following:

- (1) Provide information and education measures to inform suppliers of recyclable materials on the types of materials that are acceptable and those that are not acceptable;
- (2) A description of training measures for drivers responsible for pickup of recyclable materials;
- (3) Clearly mark public drop-off containers regarding which materials can be accepted;
- (4) Rejecting nonrecyclable wastes or household hazardous wastes at the source; or
- (5) Establish procedures for the handling and disposal of nonrecyclable materials.

b. Outdoor storage. The SWPPP shall include procedures to minimize the exposure of recyclable materials to surface runoff and precipitation. The SWPPP shall include good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas. Control measures shall include one or more of the following:

- (1) Provide totally-enclosed drop-off containers for the public;
- (2) Install a sump and pump with each containment pit, and treat or discharge collected fluids to a sanitary sewer system;
- (3) Provide dikes and curbs for secondary containment (e.g., around bales of recyclable waste paper);
- (4) Divert surface runoff away from outside material storage areas;
- (5) Provide covers over containment bins, dumpsters, roll-off boxes; or
- (6) Store the equivalent one day's volume of recyclable materials indoors.

c. Indoor storage and material processing. The SWPPP shall include measures to minimize the release of pollutants from indoor storage and processing areas. Control measures shall include one or more of the following:

- (1) Schedule routine good housekeeping measures for all storage and processing areas;
 - (2) Prohibit a practice of allowing tipping floor washwaters from draining to any portion of the storm sewer system; or
 - (3) Provide employee training on pollution prevention practices.
- d. Vehicle and equipment maintenance. The SWPPP shall also provide for control measures in those areas where vehicle and equipment maintenance is occurring outdoors. Control measures shall include one or more of the following:
- (1) Prohibit vehicle and equipment washwater discharges;
 - (2) Minimize or eliminate outdoor maintenance areas, wherever possible;
 - (3) Establish spill prevention and clean-up procedures in fueling areas;
 - (4) Avoid topping off fuel tanks;
 - (5) Divert runoff from fueling areas;
 - (6) Store lubricants and hydraulic fluids indoors; or
 - (7) Provide employee training on proper handling, storage of hydraulic fluids and lubricants.

5. Facilities engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap. The following SWPPP special conditions have been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap.

Vessel breaking and scrapping activities. Scrapping of vessels shall be accomplished ashore beyond the range of mean high tide, whenever practicable. If this activity must be conducted while a vessel is afloat or grounded in state waters, then the permittee shall employ control measures to reduce the amount of pollutants released. The following control measures shall be implemented during those periods when vessels (ships, barges, yachts, etc.) are brought to the facility's site for recycling, scrapping, and storage prior to before scrapping.

- a. Fixed or floating platforms sufficiently sized and constructed to catch and prevent scrap materials and pollutants from entering surface waters (or equivalent measures approved by the board department) shall be used as work surfaces when working on or near the water surface. These platforms shall be cleaned as required to prevent pollutants from entering surface waters and at the end of each work shift. All scrap metals and pollutants shall be collected in a manner to prevent releases.
- b. There shall be no discharge of oil or oily wastewater at the facility. Drip pans and other protective devices shall be required for all oil and oily waste transfer operations to catch incidental spillage and drips from hose nozzles, hose racks, drums, or barrels. Drip pans and other protective

devices shall be inspected and maintained to prevent releases. Oil and oily waste shall be disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board before upon request.

c. During the storage, breaking, and scrapping period, oil containment booms shall be deployed either around the vessel being scrapped, or across the mouth of the facility's wet slip, to contain pollutants in the event of a spill. Booms shall be inspected, maintained, and repaired as needed. Oil, grease and fuel spills shall be prevented from reaching surface waters. Cleanup shall be carried out immediately after an oil, grease, or fuel spill is detected.

d. Paint and solvent spills shall be immediately, upon discovery of the spills, cleaned up to prevent pollutants from reaching storm drains, deck drains, and surface waters.

e. Contaminated bilge and ballast water shall not be discharged to surface waters. If it becomes necessary to dispose of contaminated bilge and ballast waters during a vessel breaking activity, the wastewater shall be disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board department upon request.

D. Benchmark monitoring and reporting requirements. Scrap recycling and waste recycling facilities (both source-separated and nonsource-separated facilities), and facilities engaged in dismantling ships, marine salvaging, and marine wrecking—ships for scrap are required to monitor their stormwater discharges for the pollutants of concern listed in Table 210.

Table 210 Sector N – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Scrap Recycling and Waste Recycling Facilities (nonsource-separated facilities only) (SIC Code 5093)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 <u>1,100</u> µg/L
Total Recoverable Cadmium	2.1 <u>1.8</u> µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 <u>13</u> µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L

Scrap Recycling and Waste Recycling Facilities (source-separated facilities) (SIC Code 5093)

Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum ¹	750 <u>1,100</u> µg/L
Total Recoverable Cadmium ¹	2.1 <u>1.8</u> µg/L
Total Recoverable Chromium ¹	16 µg/L
Total Recoverable Copper ¹	18 <u>13</u> µg/L
Total Recoverable Iron¹	1.0 mg/L
Total Recoverable Lead ¹	120 µg/L
Total Recoverable Zinc ¹	120 µg/L

¹Metals monitoring is only required at source-separated facilities for the specific metals listed ~~above~~ that are received at the facility.

Facilities Engaged in Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships for Scrap (SIC Code 4499, limited to list)

Total Recoverable Aluminum	750 <u>1,100</u> µg/L
Total Recoverable Cadmium	2.1 <u>1.8</u> µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 <u>13</u> µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-220. Sector O - Steam electric generating facilities.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from steam electric power generating facilities using coal, natural gas, oil, nuclear energy, etc. to produce a steam source, including coal handling areas (Industrial Activity Code "SE").

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Stormwater discharges from coal pile runoff subject to numeric effluent limitations are eligible for coverage under this permit, but are subject to **the** limitations established by Part I A 1 c (2).

Stormwater discharges from ancillary facilities (e.g., fleet centers, gas turbine stations, and substations) that are not contiguous to a steam electric power generating facility are not covered by this permit. Heat capture and heat recovery combined cycle generation facilities are also not covered by this permit; however, dual fuel co-generation facilities that generate electric power are included.

B. Stormwater controls. Good housekeeping measures.

1. Fugitive dust emissions. **The** permittee shall describe and implement measures that prevent or minimize fugitive dust emissions from coal and ash handling areas. **The** permittee shall minimize off-site tracking of coal dust and ash. Control measures to consider include installing specially designed tires, or washing vehicles in a designated area before they leave **the** site, and controlling **the** wash water.

2. Delivery vehicles. **The** SWPPP shall describe measures that prevent or minimize contamination of stormwater runoff from delivery vehicles arriving on **the** plant site. At a minimum **the** permittee shall consider **the** following:

- a. Develop procedures for **the** inspection of delivery vehicles arriving on **the** plant site, and ensure overall integrity of **the** body or container; and
- b. Develop procedures to deal with leakage and spillage from vehicles or containers.

3. Fuel oil unloading areas. **The** SWPPP shall describe measures that prevent or minimize contamination of precipitation or surface runoff from fuel oil unloading areas. At a minimum **the** permittee shall consider using **the** following measures, or an equivalent:

- a. Use of containment curbs in unloading areas;
- b. During deliveries, having station ~~personnel~~ staff familiar with spill prevention and response procedures present to ensure that any leaks and spills are immediately contained and cleaned up; and
- c. Use of spill and overflow protection. Drip pans, drip diapers, or other containment devices may be placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at **the** connectors.

4. Chemical loading and unloading areas. **The** permittee shall describe and implement measures that prevent or minimize **the** contamination of precipitation or surface runoff from chemical loading and unloading areas. At a minimum **the** permittee shall consider using **the** following measures (or their equivalents):

- a. Use of containment curbs at chemical loading and unloading areas to contain spills;

- b. During deliveries, having station ~~personnel~~ staff familiar with spill prevention and response procedures present to ensure that any leaks or spills are immediately contained and cleaned up; and

- c. Covering chemical loading and unloading areas, and storing chemicals indoors.

5. Miscellaneous loading and unloading areas. **The** permittee shall describe and implement measures that prevent or minimize **the** contamination of stormwater runoff from loading and unloading areas. **The** permittee shall consider **the** following, at a minimum (or their equivalents):

- a. Covering **the** loading area;
- b. Grading, berming, or curbing around **the** loading area to divert run-on; or
- c. Locating **the** loading and unloading equipment and vehicles so that leaks are contained in existing containment and flow diversion systems.

6. Liquid storage tanks. **The** permittee shall describe and implement measures that prevent or minimize contamination of stormwater runoff from aboveground liquid storage tanks. At a minimum **the** permittee shall consider employing **the** following measures (or their equivalents):

- a. Use of protective guards around tanks;
- b. Use of containment curbs;
- c. Use of spill and overflow protection; and
- d. Use of dry cleanup methods.

7. Large bulk fuel storage tanks. **The** permittee shall describe and implement measures that prevent or minimize contamination of stormwater runoff from large bulk fuel storage tanks. At a minimum **the** permittee shall consider employing containment berms (or its equivalent). **The** permittee shall also comply with applicable state and federal laws, including Spill Prevention Control and Countermeasures (SPCC).

8. Spill reduction measures. **The** permittee shall describe and implement measures to reduce **the** potential for an oil or chemical spill, or reference **the** appropriate section of their SPCC plan. **The** structural integrity of all aboveground tanks, pipelines, pumps, and other related equipment shall be visually inspected as part of **the** routine facility inspection. All repairs deemed necessary based on **the** findings of **the** inspections shall be completed immediately to reduce **the** incidence of spills and leaks occurring from ~~such~~ faulty equipment.

9. Oil bearing equipment in switchyards. **The** permittee shall describe and implement measures to prevent or minimize contamination of surface runoff from oil bearing equipment in switchyard areas. **The** permittee shall consider **the** use of level grades and gravel surfaces to retard flows and limit **the** spread of spills, and **the** collection of stormwater runoff in perimeter ditches.

10. Residue hauling vehicles. All residue hauling vehicles shall be inspected for proper covering over the load, adequate gate sealing, and overall integrity of the container body. Vehicles without load coverings or adequate gate sealing, or with leaking containers or beds shall be repaired as soon as practicable.

11. Ash loading areas. The permittee shall describe and implement procedures to reduce or control the tracking of ash and residue from ash loading areas. Where practicable, clear the ash building floor and immediately adjacent roadways of spillage, debris, and excess water before departure of each loaded vehicle.

12. Areas adjacent to disposal ponds or landfills. The permittee shall describe and implement measures that prevent or minimize contamination of stormwater runoff from areas adjacent to disposal ponds or landfills. The permittee shall develop procedures to:

- a. Reduce ash residue which that may be tracked on to access roads traveled by residue trucks or residue handling vehicles; and
- b. Reduce ash residue on exit roads leading into and out of residue handling areas.

13. Landfills, scrapyards, surface impoundments, open dumps, general refuse sites. The SWPPP shall address and include appropriate control measures to minimize the potential for contamination of runoff from landfills, scrapyards, surface impoundments, open dumps, and general refuse sites.

C. Numeric effluent limitations. Permittees with point sources of coal pile runoff associated with steam electric power generation shall monitor these stormwater discharges for the presence of TSS and for pH at least annually in accordance with Part I A 1 c (2).

~~D. Benchmark monitoring and reporting requirements. Steam electric power generating facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 220.~~

Table 220 Sector Q — Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Steam Electric Generating Facilities (Industrial Activity Code "SE")	
Total Recoverable Iron	1.0 mg/L

9VAC25-151-240. Sector Q - Water transportation and ship and boat building and repairing yards.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with the following industrial activities:

1. Water transportation facilities identified by SIC Codes 4412-4499 (except SIC Code 4499 facilities as specified in Sector N - 9VAC25-151-210). The water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters, marine cargo handling operations, ferry operations, towing and tugboat services, and marinas.

2. Ship building and repairing and boat building and repairing facilities identified by SIC Codes 3731 and 3732. The U.S. Coast Guard refers to a vessel 65 feet or greater in length as a "ship" and a vessel smaller than 65 feet as a "boat."

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

C. Stormwater controls.

1. Good housekeeping.

a. Pressure washing area. As defined by this permit, process wastewater related to hull work at facilities shall be any water used on a vessel's hull for any purpose, regardless of application pressure, including the activities of removing marine salts, sediments, marine growth and paint, or other hull, weather deck, or superstructure cleaning activities using water, such as (e.g., preparing those areas for inspection or work that may include cutting, welding, grinding, or coating), etc.). The discharge water shall be permitted as a process wastewater by a separate VPDES permit.

b. Blasting and painting areas. The permittee shall describe and implement measures to prevent spent abrasives, paint chips, and overspray from discharging into the receiving water or the storm sewer system. The permittee shall contain all blasting or painting activities or use other measures to prevent or minimize the discharge of contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Stormwater conveyances shall be regularly cleaned to remove deposits of abrasive blasting debris and paint chips. The SWPPP shall include any standard operating practices with regard to blasting and painting activities, such as (e.g., the prohibition of uncontained blasting or painting over open water, or the prohibition of blasting or painting during windy conditions which can render containment ineffective).

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c. Material storage areas. All containerized materials shall be plainly labeled and stored in a protected, secure location away from drains. The permittee shall describe and implement measures to prevent or minimize the contamination of precipitation or surface runoff from the storage areas. The SWPPP shall specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. The permittee shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on-site. Where abrasive blasting is performed, the SWPPP shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

d. Engine maintenance and repair areas. The permittee shall describe and implement measures to prevent or minimize contamination of precipitation or surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to before disposal, prohibiting the practice of hosing down the shop floor using dry cleanup methods, and treating or recycling stormwater runoff collected from the maintenance area.

e. Material handling areas. The permittee shall describe and implement measures to prevent or minimize contamination of precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following measures (or their equivalents): covering fueling areas; using spill and overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing run-on of stormwater to material handling areas.

f. Drydock activities. The SWPPP shall address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the stormwater runoff. The SWPPP shall describe the procedures for cleaning the accessible areas of the drydock prior to before flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock shall also be included within the SWPPP. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off debris and spent blasting material from the accessible areas of the drydock prior to before flooding; and having absorbent materials and oil containment booms readily available to contain or cleanup any spills.

g. General yard area. The SWPPP shall include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial

scrap, insulation, welding rods, packaging, etc. shall be routinely removed from the general yard area.

(1) Preventative maintenance. As part of the facility's preventive maintenance program, stormwater management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives, paint chips, and solids are intercepted and retained prior to before entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

(2) Routine facility inspections. The following areas shall be included in all quarterly inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

(3) Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management, spent solvent management, disposal of spent abrasives, disposal of vessel wastewaters, spill prevention and control, fueling procedures, general good housekeeping practices, painting and blasting procedures, and used battery management.

D. Benchmark monitoring and reporting requirements. These facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 240.

Table 240 Sector Q – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Water Transportation Facilities (SIC Codes 4412-4499 except 4499 as specified in Sector N) and Ship and Boat Building or Repairing Yards (SIC Codes 3731 and 3732)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 13 µg/L
Total Recoverable Zinc	120 µg/L

9VAC25-151-320. Sector Y - Rubber, miscellaneous plastic products, and miscellaneous manufacturing industries.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from rubber and miscellaneous plastic products manufacturing facilities, SIC Codes 3011, 3021, 3052, 3053, 3061, and 3069.

B. SWPPP requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. Summary of potential pollutant sources. Rubber manufacturing facilities shall review the use of zinc at the facility and the possible pathways through which zinc may be discharged in stormwater runoff.

2. Stormwater controls.

a. Controls for rubber manufacturers. Rubber manufacturing facilities shall describe and implement specific controls to minimize the discharge of zinc in stormwater discharges from the facility. Listed below are possible sources of zinc. These shall be reviewed and the accompanying control measures (or their equivalents) shall be documented in the SWPPP. Also, some general control measure options to consider include: using chemicals that are purchased in pre-weighed, sealed polyethylene bags; storing materials that are in use in sealable containers; ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened; and using automatic dispensing and weighing equipment.

(1) Zinc bags. All permittees shall review the handling and storage of zinc bags at their facilities. Following are some control measure options: employee training regarding the handling and storage of zinc bags; indoor storage of zinc bags; cleanup of zinc spills without washing the zinc into the storm drain; and the use of 2,500-pound sacks of zinc rather than 50- 50-pound to 100-pound sacks.

(2) Dumpsters. The permittee shall minimize discharges of zinc from dumpsters. Following are some control measure options: provide a cover for the dumpster; move the dumpster to an indoor location; or provide a lining for the dumpster.

(3) Dust collectors or baghouses. Permittees shall minimize contributions of zinc to stormwater from dust collectors and baghouses. Improperly operating dust collectors and baghouses shall be replaced or repaired as appropriate.

(4) Grinding operations. Permittees shall minimize contamination of stormwater as a result of dust generation from rubber grinding operations. One control measure option is to install a dust collection system.

(5) Zinc stearate coating operations. Permittees shall minimize the potential for stormwater contamination from drips and spills of zinc stearate slurry that may be released to the storm drain. One control measure option is to use alternative compounds to zinc stearate.

b. Controls for plastic products manufacturers. Plastic products manufacturing facilities shall describe and implement specific controls to minimize the discharge of plastic resin pellets in stormwater discharges from the facility. The following control measures (or their

equivalents) shall be documented in the SWPPP: minimizing spills; cleaning up of spills immediately and thoroughly; sweeping thoroughly; pellet capturing; employee education; and disposal precautions.

C. Benchmark monitoring and reporting requirements. Rubber product manufacturing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 320.

Table 320 Sector Y – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC Codes 3011, 3021, 3052, 3053, 3061, and 3069).	
Total Recoverable Zinc	120 µg/L

9VAC25-151-340. Sector AA - Fabricated metal products.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from the following fabricated metals industries, except for electrical related industries: fabricated metal products, except machinery and transportation equipment, SIC Codes 3411-3471, 3479, and 3482-3499; and jewelry, silverware, and plated ware, SIC Codes 3911-3915.

B. Benchmark monitoring and reporting requirements. Metal fabricating facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 340.

Table 340 Sector AA – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Fabricated Metal Products Except Coating (SIC Codes 3411-3471, 3482-3499, 3911-3915)	
Total Recoverable Aluminum	750 1,100 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Zinc	120 µg/L
Total Recoverable Copper	18 13 µg/L
Fabricated Metal Coating and Engraving (SIC Code 3479)	
Total Recoverable Zinc	120 µg/L

9VAC25-151-350. Sector AB - Transportation equipment, industrial, or commercial machinery.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges

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associated with industrial activity from transportation equipment and industrial or commercial machinery manufacturing facilities commonly described by SIC Codes 3511-3599, except SIC Codes 3571-3579.

B. SWPPP requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following item:

Site description. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: vents and stacks from metal processing and similar operations.

C. Benchmark monitoring and reporting requirements. Transportation equipment manufacturing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 350.

Table 350 Sector AB – Benchmark Monitoring Requirements	
Pollutants of Concern	Benchmark Concentration
Transportation equipment manufacturing facilities (SIC Codes 3511-3599 except SIC Codes 3571-3579)	
Total Petroleum Hydrocarbons (TPH)*	15.0 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	10 13 µg/L
Total Recoverable Zinc	120 µg/L
*Total Petroleum Hydrocarbons (TPH) is <u>the</u> sum of individual gasoline range organics and diesel range organics (TPH-GRO and TPH-DRO) to be measured by EPA SW 846 Method 8015 for gasoline and diesel range organics, or by EPA SW 846 Methods 8260 Extended and 8270 Extended.	

9VAC25-151-370. Sector AD - Nonclassified facilities or stormwater discharges designated by the board department as requiring permits.

A. Discharges covered under this section. Sector AD is used to provide permit coverage for facilities designated by the board department as needing a stormwater permit under the provisions of 9VAC25-31-120 A 1 c or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. Therefore, almost any type of stormwater discharge may be covered under this sector. Permittees shall be assigned to Sector AD by the board department and may not choose Sector AD as the sector describing the facility's activities.

B. Benchmark monitoring and reporting requirements. The board department shall establish any additional monitoring requirements for ~~you~~ a facility ~~prior to~~ before authorizing coverage under this permit.

Part V

Chesapeake Bay Total Maximum Daily Load Compliance

9VAC25-151-400. Chesapeake Bay total maximum daily load compliance.

A. Chesapeake Bay TMDL Compliance. EPA's Chesapeake Bay TMDL (December 29, 2010) includes wasteload allocations for VPDES permitted industrial stormwater facilities as part of the regulated stormwater aggregate load. EPA used data submitted by Virginia with the Phase I Chesapeake Bay TMDL Watershed Implementation Plan, including the number of industrial stormwater permits per county and the number of urban acres regulated by industrial stormwater permits, as part of their development of the aggregate load. Aggregate loads for industrial stormwater facilities were appropriate because actual facility loading data were not available to develop individual facility wasteload allocations.

Virginia estimated the loadings from industrial stormwater facilities using actual and estimated facility acreage information and total phosphorus (TP) and total nitrogen (TN) loading rates from the Northern Virginia Planning District Commission (NVPDC) Guidebook for Screening Urban Nonpoint Pollution Management Strategies (Annandale, VA November 1979), prepared for the Metropolitan Washington Council of Governments. The loading rates used were as follows:

TP - High (80%) imperviousness industrial; 1.5 lb/ac/yr

TN - High (80%) imperviousness industrial; 12.3 lb/ac/yr

Actual facility area information and TP and TN data collected for facilities subject to Part V of this permit will be used by the department to quantify the nutrient and sediment loads from those VPDES permitted industrial stormwater facilities.

1. Facilities that obtained coverage under the 2019 industrial stormwater general permit that demonstrated compliance with the Chesapeake Bay TMDL loading rates.

a. Owners shall maintain documentation of their demonstration of compliance with the Chesapeake Bay TMDL loading rates with the SWPPP and shall continue implementing any BMPs that may have been developed as part of that demonstration. Documentation may include:

(1) Calculations submitted to the department indicating that reductions were not necessary;

(2) A completed TMDL Action Plan, including a description of the means and methods, such as management practices and retrofit programs that were utilized to meet the required reductions;

(3) Other means accepted by the department indicating compliance with the Chesapeake Bay TMDL loading rates.

2. Facilities that obtained coverage under the 2019 industrial stormwater general permit that did not demonstrate compliance with the Chesapeake Bay TMDL loading rates shall submit a demonstration to the department.

a. Owners of facilities that submitted a Chesapeake Bay TMDL action plan during the 2019 industrial stormwater general permit term that did not achieve reductions by the end of the 2019 permit term shall demonstrate that they have achieved their reductions by December 31, 2025. The demonstration shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

b. Owners of facilities that completed four samples for each outfall for TN and TP during the 2019 industrial stormwater general permit term that did not submit calculations by the end of the 2019 permit term shall utilize the procedures in Part V D to calculate their facility stormwater loads. The permittee shall submit a copy of the calculations, and a Chesapeake Bay TMDL action plan if required under Part V E, no later than 60 days following coverage under this general permit to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by December 31, 2025, and documentation that the reductions have been achieved shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

c. Owners of facilities registered prior to July 1, 2022, that did not complete four samples for each outfall for TN and TP by the end of the 2019 industrial stormwater general permit term shall monitor their discharges for TN and TP to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four quarters of permit coverage. Samples shall be collected and analyzed in accordance with Part V B. Monitoring results shall be reported in accordance with Part V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the procedures in Part V D, and a Chesapeake Bay TMDL action plan if required under Part V E, shall be submitted no later than 60 days following the completion of the fourth quarterly monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by December 31, 2025, and documentation that the reductions have been achieved shall be submitted to the department no later than January 10, 2026. Documentation of compliance with the

Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

Facilities may use the applicable sampling data collected during the 2019 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirement in accordance with Part V A 2 c.

d. Owners of facilities registered after June 30, 2022, that did not complete four samples for each outfall for TN and TP by the end of the 2019 industrial stormwater general permit term shall monitor their discharges in accordance with Part V A 3.

Facilities may use the applicable sampling data collected during the 2019 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirements in accordance with Part V A 3.

3. Facilities that obtain initial coverage under the 2024 industrial stormwater general permit, but are not newly constructed facilities as identified in 9VAC25-151-60 C 13.

a. Owners of facilities in the Chesapeake Bay watershed that obtain initial coverage under the 2024 industrial stormwater general permit shall monitor their discharges for TN and TP to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four quarters of permit coverage. Samples shall be collected and analyzed in accordance with Part V B. Monitoring results shall be reported in accordance with Part V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the procedures in Part V D and a Chesapeake Bay TMDL action plan if required under Part V E shall be submitted no later than 60 days following the completion of the fourth quarterly monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Reductions, if applicable, shall be achieved by two years following the end of the fourth quarterly monitoring period, and documentation that the reductions have been achieved shall be submitted to the department no later than the 10th of the month directly following the two year period. Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with the SWPPP.

B. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part II A.

2. When and how to sample. A minimum of one grab sample shall be taken from the discharge associated with industrial

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activity resulting from a storm event that results in a discharge from the site providing the interval from the preceding storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring shall be performed at a time when a measurable discharge occurs at the site. For discharges from a stormwater management structure, the monitoring shall be performed at a time when a measurable discharge occurs from the structure.

The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of the discharge, provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information shall be submitted in the department's electronic discharge monitoring report (e-DMR) system and maintained with the SWPPP. If the sampled discharge commingles with process or nonprocess water, the permittee shall attempt to sample the stormwater discharge before it mixes with the nonstormwater.

3. Storm event data. For each monitoring event, except snowmelt monitoring, along with the monitoring results, the permittee shall identify the date of the storm event sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the interval between the storm event sampled and the end of the previous storm event discharge. For snowmelt monitoring, the permittee shall identify the date of the sampling event.

4. Monitoring periods. Quarterly monitoring shall be conducted in each of the following three-month periods: January through March, April through June, July through September, and October through December.

5. Documentation explaining a facility's inability to obtain a sample (including dates and times the outfalls were viewed or sampling was attempted), of no rain event, or of deviation from the 72-hour storm interval shall be submitted with the e-DMR and maintained with the SWPPP. Acceptable documentation includes National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

6. Representative outfalls may be used in accordance with Part I A 2 f.

C. Reporting monitoring results.

1. Reporting to the department. The permittee shall follow the reporting requirements and deadlines in Table 400-1 if required by Part V A 2 or A 3:

Table 400-1 Monitoring Reporting Requirements
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Quarterly Chesapeake Bay TMDL Monitoring	Submit the results by January 10, April 10, July 10, and October 10
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2. Permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II C.

3. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

D. Calculation of facility loads.

1. Permittees required to collect nutrient and sediment data in accordance with Part V A 2 or A 3 shall analyze the data collected to determine if pollution reductions are required. The permittee shall average the data collected at the facility for each of the pollutants of concern (POC) (e.g., TP and TN) and compare the results to the loading rates for TP and TN presented in Part V A.

The following formula may be used to determine the loading rate:

$$L = 0.226 \times P \times P_j \times (0.05 + (0.9 \times I_a)) \times C$$

where:

L = the POC loading rate (lb/acre/year)

P = the annual rainfall (inches/year) - The permittee may use either actual annual average rainfall data for the facility location (in inches/year), the Virginia annual average rainfall of 44.3 inches/year, or another method approved by the department.

P_j = the fraction of annual events that produce runoff - The permittee shall use 0.9 unless the department approves another rate.

I_a = the impervious fraction of the facility impervious area of industrial activity to the facility industrial activity area.

C = the POC average concentration of all facility samples (mg/L) - Facilities with multiple outfalls shall calculate a weighted average concentration for each outfall using the drainage area of each outfall.

For total phosphorus, all daily concentration data below the quantitation level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported.

For total nitrogen, if none of the daily concentration data for the respective species (i.e., TKN, nitrate, or nitrite) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point is reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

Calculations shall be submitted to the department within 60 days from the end of the last monitoring period that satisfies the monitoring requirements in Part V A 2 or A 3. Calculations shall be submitted to the DEQ regional office serving the area where the industrial facility is located, on a form provided by the department, and maintained with the facility's SWPPP.

Alternative calculations may be accepted on a case by case basis by the department to accommodate facilities with outfalls that rarely discharge.

E. Chesapeake Bay TMDL action plan requirements. For permittees required to submit calculations in accordance with Part V D, if the calculated facility loading rate for TP or TN is above the loading rates for TP or TN presented in Part V A, then the permittee shall develop and submit a Chesapeake Bay TMDL action plan to the department.

The Chesapeake Bay TMDL action plan shall be submitted on a form provided by the department to the regional office serving the area where the industrial facility is located within 60 days following the completion of the fourth quarterly monitoring period. A copy of the current Chesapeake Bay TMDL action plan and all facility loading rate calculations shall be maintained with the facility's SWPPP. The Chesapeake Bay TMDL action plan shall include:

1. A determination of the total pollutant load reductions for TP and TN (as appropriate) necessary to reduce the annual loads from industrial activities. This shall be determined by multiplying the industrial average times the difference between the TMDL loading rates listed in Part V A and the actual facility loading rates calculated in accordance with Part V D. The reduction applies to the total difference calculated for each pollutant of concern; and

2. The means and methods, such as management practices and retrofit programs that will be utilized to meet the required reductions determined in Part V E 1 and a schedule to achieve those reductions by the applicable deadline set in Part V A 2 or A 3. Pollutant reductions may be achieved using a combination of the following alternatives:

- a. Reductions provided by one or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed in 9VAC25-870-65, approved BMPs found on the Virginia Stormwater Clearinghouse website, or BMPs approved by

the Chesapeake Bay Program. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee;

- b. Implementation of site-specific BMPs followed by a minimum of four stormwater samples collected in accordance with sampling requirements in Part I B 8 a that demonstrate pollutant loadings have been reduced below those calculated under Part I B 8 c. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee; or

- c. Acquisition of nonpoint source credits certified by the board as perpetual in accordance with § 62.1-44.19:20 of the Code of Virginia.

VA.R. Doc. No. R22-7009; Filed April 27, 2023, 10:38 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (amending 9VAC25-190-15, 9VAC25-190-20, 9VAC25-190-50, 9VAC25-190-60, 9VAC25-190-70).

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

Public Hearing Information:

June 26, 2023 - 10 a.m. - Department of Environmental Quality, Piedmont Regional Office, Training Room, 4949-A Cox Road, Glen Allen, VA 23060

Public Comment Deadline: July 21, 2023.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400,

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P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2666, FAX (804) 698-4178, or email peter.sherman@deq.virginia.gov.

Background: The Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (9VAC25-190) has existed since 1994. This general permit contains effluent limitations, monitoring requirements, and special conditions for discharges of process wastewater, which may be commingled with stormwater, and stormwater associated with industrial activity to surface waters. The proposed changes to the regulation are being made to reissue this general permit and in response to technical advisory committee suggestions and staff requests to revise, update, and clarify the permit conditions.

Summary:

Proposed amendments to the general permit regulation include (i) revising the term of the general permit regulation to July 1, 2024, through June 30, 2029; (ii) updating the name "Virginia Department of Mines, Minerals and Energy" to "Virginia Department of Energy"; (iii) changing the following aspects of the registration statement requirements: replace facility operator with facility contact; add a National Association of Insurance Commissioners code requirement for permittees; revise the substantially identical and representative stormwater outfall language; add a requirement to indicate ownership type; and add a conditional electronic submittal requirement for registration statements, which provides for notice and a three-month period before it becomes effective; (iv) specifying that for visual monitoring of stormwater discharges, samples must be in a clean, colorless glass or plastic container and examined in a well-lit area; (v) revising the TMDL special condition so it is not limited to stormwater and is consistent with VPDES requirements and other permits; (vi) adding discharge requirements for emergency dewatering during flooded conditions; (vii) revising the representative outfalls provision to coordinate with edits to the registration statement; (viii) under storm water pollution prevention plan (SWPPP) deadlines, simplifying the reference to continuing coverage by removing the year of the general permit; (ix) supplementing the language triggering review and amendment of the SWPPP to include any other process, observation, or event results in a determination that modifications to the SWPPP are necessary; (x) for authorized non-stormwater discharges, clarifying that firefighting includes firefighting training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of the Code of Virginia and that building washdown be managed in a manner to avoid an instream impact; (xi) under standard conditions, adding a conditional electronic submittal requirement for discharge monitoring reports that provides for notice and a three-month period before it becomes effective;

(xii) under noncompliance reporting, revising the 24-hour reporting language and updating the link for online reporting; (xiii) specifying that online reporting is required for reporting outside of normal working hours; (xiv) for emergency calls, changing "Virginia Department of Emergency Services" to "Virginia Department of Emergency Management's Emergency Operations Center"; and (xv) for inspection and entry, clarifying that an authorized representative of the director includes an authorized contractor acting as a representative of the administrator.

9VAC25-190-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference that regulation shall be as it exists and has been published as of July 1, ~~2018~~ 2022.

9VAC25-190-20. Purpose; effective date of permit.

A. The purpose of this chapter is to establish General Permit Number VAG84 to regulate wastewater and stormwater discharges to surface waters from nonmetallic mineral mines as follows:

1. For active and inactive nonmetallic mineral mining facilities in SIC Major Group 14, this general permit covers discharges composed entirely of stormwater associated with industrial activity.
2. This general permit authorizes the discharge of process wastewater as well as stormwater associated with industrial activity from active and inactive mineral mines classified under:
 - a. SIC Code 1411 - NAICS Code 212311,
 - b. SIC Code 1422 - NAICS Code 212312,
 - c. SIC Code 1423 - NAICS Code 212313,
 - d. SIC Code 1429 - NAICS Code 212319,
 - e. SIC Code 1442 - NAICS Code 212321,
 - f. SIC Code 1455 - NAICS Code 212324,
 - g. SIC Code 1459 - NAICS Code 212325, excluding bentonite and magnesite mines,
 - h. SIC Code 1475 - NAICS Code 212392, and
 - i. SIC Code 1499 - NAICS Code 212399, excluding gypsum, graphite, asbestos, diatomite, jade, novaculite, wollastonite, tripoli or asphaltic mineral mines.
3. Coal mining, metal mining, and oil and gas extraction are not covered by this general permit.

B. This general permit will become effective on July 1, ~~2019~~ 2024, and will expire June 30, ~~2024~~ 2029. For any covered owner, this general permit is effective upon compliance with

all the provisions of 9VAC25-190-50 and the receipt of this general permit.

9VAC25-190-50. Authorization to discharge.

A. Any owner governed by this general permit is authorized to discharge process wastewater and stormwater as described in 9VAC25-190-20 A 1 and 2 to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement in accordance with 9VAC25-190-60, and that registration statement is accepted by the board department;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-190-70;
4. The owner has and maintains during such authorization a mineral mining permit for the operation to be covered by this general permit that has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or an associated waived program, locality, or state agency) under provisions and requirements of Title 45.1 45.2 of the Code of Virginia. Mineral mines located in bordering states with discharges in Virginia shall provide documentation that they have a mining permit from the appropriate state authority. Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 45.2 of the Code of Virginia are exempt from this requirement; and
5. The board department has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board department will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;
3. The discharge violates or would violate the antidegradation policy in the water quality standards at 9VAC25-260-30; or
4. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Compliance with this general permit constitutes compliance for purposes of enforcement with §§ 301, 302, 306, 307, 318, 403, and 405(b) 405(a) and (b) of the federal Clean Water Act and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit

does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal date established by the board department, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge until such time as the board department either:

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

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

- a. Initiate enforcement action based upon the general permit coverage that has been continued;
- b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued coverage or be subject to enforcement action for discharging without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-190-60. Registration statement.

A. Any owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES general permit for nonmetallic mineral mining facilities.

1. New facilities. Any owner proposing a discharge shall submit a complete registration statement at least 60 days prior to the date planned for commencement of the discharge or a later submittal date established by the board department.

2. Existing facilities.

a. Any owner covered by an VPDES individual permit that is proposing to be covered by this general permit shall submit a complete registration statement at least 240 days prior to the expiration date of the individual VPDES permit.

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b. Any owner that was authorized to discharge under the expiring VPDES general permit for nonmetallic mineral mining and that intends to continue coverage under this general permit shall submit a complete registration statement to the board department at least 60 days prior to the expiration of the existing permit or a later submittal date established by the board department.

B. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 b of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive.

C. The required registration statement shall contain the following information:

1. Facility owner and ~~operator or other facility~~ contact name, address, email address, and telephone number;
2. Facility name, county, and location;
3. Description of mining activity;
4. Primary and secondary SIC and NAIC codes;
5. Discharge information including:
 - a. A list of outfalls identified by outfall numbers;
 - b. Characterization of the type of each listed outfall's discharge as either process wastewater, stormwater, or process wastewater commingled with stormwater;
 - c. Characterization of the source of each listed outfall's discharge as either mine pit dewatering, stormwater associated with industrial activity (see definition in 9VAC25-190-10), stormwater not associated with industrial activity, groundwater infiltration, wastewater from vehicle or equipment degreasing activities, vehicle washing and return water from operations where mined material is dredged, mined material washing, noncontact cooling water, miscellaneous plant cleanup wastewater, colocated facility discharges (identify the colocated facility), other discharges not listed here (describe), or any combination of the above items listed in this subdivision C;
 - d. The receiving stream, including wetlands for each outfall listed;
 - e. The latitude and longitude for each outfall listed; and
 - f. Indicate which stormwater outfalls ~~will be representative outfalls that require a single discharge monitoring report (DMR). For stormwater outfalls that are to be represented by other outfall discharges, provide a description of the activities associated with those outfalls and explain why they are substantially the same as the representative outfall to be sampled; could operate as substantially identical or representative outfalls (if any). Provide the following for each:~~
 - (1) The locations of the outfalls; and

(2) Why the outfalls are expected to discharge substantially identical effluents including, where available, evaluation of monitoring data;

6. Indicate if the facility has a current VPDES permit and the permit number if it does;
7. Description of wastewater treatment, reuse or recycle systems, or both;
8. List of any treatment chemicals added to wastewater or stormwater that could be discharged. Include safety data sheets, the maximum proposed dosing rates, and a demonstration that application or use will not result in aquatic toxicity;
9. List of colocated facilities;
10. Indicate if the facility is a hazardous waste treatment, storage, or disposal facility;
11. Schematic drawing showing water flow from source to water-using industrial operations to waste treatment and disposal; and disposal of any solids removed from wastewater;
12. Aerial photo or scale map that clearly shows the property boundaries, plant site, drainage areas associated with each outfall, locations of all mine pit dewatering, existing, significant sources of materials exposed to precipitation, stormwater or process wastewater outfalls, and the receiving streams;
13. Evidence, such as the permit-license to operate a mine page, that the operation to be covered by this general permit has a mining permit that has been approved by the Virginia Department of ~~Mines, Minerals and~~ Energy, Division of Mineral Mining (or associated waived program) under the provisions and requirements of Title ~~45.1~~ 45.2 of the Code of Virginia (or appropriate bordering state authorization). Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title ~~45.1~~ 45.2 of the Code of Virginia are exempt from this requirement;
14. Mining permit number;
15. Whether the permitted facility will discharge to a municipal separate storm sewer system (MS4). If yes, the facility owner shall notify the MS4 owner of the existence of the discharge at the time of registration under this permit and include that notification with the registration statement. The notification shall include the following information: the name of the facility, a contact person and contact information, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number if assigned by DEQ;
16. Indicate if there are vehicle or equipment degreasing activities performed on site. If yes, indicate if there is any process wastewater generated from these activities;
17. Provide certification that the process wastewater system is designed to operate as "no discharge" if special condition 9VAC25-190-70 Part I B 15 is to apply to the facility. Identify the emergency outfall number;

18. State Corporation Commission entity identification number if **the** facility is required to obtain an entity identification number by law; ~~and~~

19. Ownership type, whether located on Indian lands, and existing VPA permits; and

20. **The** following certification:

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

D. **The** registration statement shall be signed in accordance with 9VAC25-31-110.

E. Where to submit. **The** registration statement shall be delivered to **the** department by either postal or electronic mail and shall be submitted to **the** DEQ regional office serving **the** area where **the** industrial facility is located. Following notification from **the** department of **the** start date for **the** required electronic submission of Notice of Intent to Discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to **the** department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between **the** notification from **the** department and **the** date after which such forms must be submitted electronically.

9VAC25-190-70. General permit.

Any owner whose registration statement is accepted by **the** ~~board~~ department will receive coverage under **the** following general permit and shall comply with **the** requirements in **the** general permit and be subject to all requirements of 9VAC25-31-190.

General Permit No.: VAG84

Effective date: July 1, 2019 ~~2024~~

Expiration date: June 30, ~~2024~~ 2029

GENERAL PERMIT FOR NONMETALLIC MINERAL MINING

AUTHORIZATION TO DISCHARGE UNDER **THE** VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND **THE** VIRGINIA STATE WATER CONTROL LAW

In compliance with **the** provisions of **the** Clean Water Act, as amended, and pursuant to **the** State Water Control Law and regulations adopted pursuant to it, owners of nonmetallic mineral mines are authorized to discharge to surface waters within **the** boundaries of **the** Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with **the** information submitted with **the** registration statement, this cover page, Part I - Effluent Limitations, Monitoring Requirements, and Special Conditions, Part II - Stormwater Management, and Part III - Conditions Applicable to All VPDES Permits, as set forth in this permit.

Part I

Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations and monitoring requirements.

1. During **the** period beginning with **the** permittee's coverage under this general permit and lasting until **the** permit's expiration date, **the** permittee is authorized to discharge process wastewater and commingled stormwater associated with industrial activity from outfalls.

Such discharges shall be limited and monitored by **the** permittee as specified ~~below~~ in **the** following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Daily Minimum	Daily Maximum	Frequency ⁽¹⁾	Sample Type
Flow (MGD)	NL	NA	NL	1/3 Months	Estimate
Total Suspended Solids (mg/l) ⁽²⁾	30	NA	60	1/3 Months	Grab
pH (standard units) ⁽²⁾⁽³⁾	NA	6.0	9.0	1/3 Months	Grab
NL = No Limitation, monitoring required					

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NA = Not Applicable

⁽¹⁾1/3 Months equals the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December. Discharge Monitoring Reports (DMRs) of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

⁽²⁾See Special Condition 18 with regard to conditions applicable to emergency dewatering.

⁽³⁾Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, those standards shall be the minimum and maximum pH effluent limits.

2. During the period beginning with the permittee's coverage under the general permit and lasting until the permit's expiration date, the permittee is authorized to discharge stormwater associated with industrial activity that does not combine with other wastewaters prior to discharge from outfalls.

a. Such discharges shall be limited and monitored by the permittee as specified below in the following table:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Daily Minimum	Daily Maximum	Frequency ⁽¹⁾	Sample Type
Flow (MG)	NA	NA	NL	1/Year	Estimate ⁽²⁾
Total Suspended Solids (mg/l)	NA	NA	NL ⁽³⁾	1/Year	Grab
pH (standard units)	NA	NL	NL	1/Year	Grab

NL = No Limitation, monitoring required

NA = Not applicable

⁽¹⁾Discharge Monitoring Reports (DMRs) of yearly monitoring (January 1 to December 31) shall be submitted to the DEQ regional office no later than the 10th day of January.

⁽²⁾Estimate of the total volume of the discharge during the storm event.

⁽³⁾Permittees shall review the results of the TSS monitoring required by Part I A 2 a to determine if changes to the stormwater pollution prevention plan (SWPPP) may be necessary. If the TSS monitoring results are greater than the evaluation value of 100 mg/l, then the permittee shall perform a routine facility inspection within five days of becoming aware of the exceedance and maintain documentation as described in Part II H 3 d for that outfall. Any deficiencies noted during the inspection shall be corrected within 60 days of being identified.

b. The permittee shall conduct calendar quarterly visual monitoring of stormwater discharges associated with industrial activity. The monitoring shall include examination of stormwater samples representative of storm event discharges from the facility and observation of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. Samples will be in a clean, colorless glass or plastic container and examined in a well-lit area. Documentation of visual monitoring of stormwater shall be maintained onsite in the SWPPP and include the examination date and time, examination personnel, outfall location, the nature of the discharge (i.e., runoff or snowmelt), visual quality of the stormwater discharge and probable sources of any observed stormwater contamination. Part II A regarding monitoring instructions, Part II B regarding representative outfalls, and Part II C regarding sampling waivers shall apply to the taking of samples for visual monitoring except that the documentation required by these sections shall be retained with the SWPPP rather than submitted to the department.

Calendar quarters equal the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.

B. Special conditions.

1. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to prevent the potential or actual point source pollution of the surface or groundwaters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or groundwaters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up and disposed of in a manner so as not to allow their entry into the surface or groundwaters of the state.

2. No sewage shall be discharged from this mineral mining activity except under **the** provisions of another VPDES permit specifically issued for that purpose.

3. There shall be no chemicals added to **the** discharge, other than those listed on **the** owner's approved registration statement, unless prior approval of **the** chemical is granted by **the board department**.

4. **The** permittee shall submit a new registration statement if **the** mining permit approved by **the** Division of Mineral Mining (or associated waived program, or bordering state mine authority) is modified or reissued in any way that would affect **the** outfall location or **the** characteristics of a discharge covered by this general permit. Government owned and operated mines without mining permits shall submit **the** registration statement whenever outfall location or characteristics are altered. **The** new registration statement shall be filed within 30 days of **the** outfall relocation or change in **the** characteristics of **the** discharge.

5. **The** permittee shall notify **the** department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur that would result in **the** discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit, if that discharge will exceed **the** highest of **the** following notification levels:

(1) One hundred micrograms per liter (100 µg/l) of **the** toxic pollutant;

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times **the** maximum concentration value reported for that pollutant in **the** permit application; or

(4) **The** level established by **the board department**.

b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit, if that discharge will exceed **the** highest of **the** following notification levels:

(1) Five hundred micrograms per liter (500 µg/l) of **the** toxic pollutant;

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times **the** maximum concentration value reported for that pollutant in **the** permit application; or

(4) **The** level established by **the board department** in accordance with 9VAC25-31-220 F.

6. Any and all product, materials, industrial wastes, or other wastes resulting from **the** purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product, or wastes shall be

handled, disposed of, or stored in such a manner and consistent with best management practices, so as not to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters, except as expressly authorized.

7. There shall be no discharge of process wastewater pollutants from colocated asphalt paving materials operations. For **the** purposes of this special condition, process wastewater pollutants are any pollutants present in water used in asphalt paving materials manufacturing that come into direct contact with any raw materials, intermediate product, by-product, or product related to **the** asphalt paving materials manufacturing process.

8. Process water may be used on site for **the** purpose of dust suppression. Dust suppression shall be carried out as a best management practice but not as a wastewater disposal method provided that ponding or direct runoff from **the** site does not occur during or immediately following its application. Dust suppression shall not occur during a storm event that results in an actual discharge from **the** site.

9. Process water from mine dewatering may be provided to local property owners for beneficial agricultural use.

10. There shall be no:

a. Discharge of floating solids or visible foam in other than trace amounts from process water discharges;

b. Solids deposition to surface water as a result of a discharge associated with industrial activity; or

c. Oil sheen resulting from petroleum products discharged to surface water as a result of **the** industrial activity.

11. **The** permittee shall report at least two significant digits for a given parameter. Regardless of **the** rounding convention used (i.e., five always rounding up or to **the** nearest even number) by **the** permittee, **the** permittee shall use **the** convention consistently and shall ensure that consulting laboratories employed by **the** permittee use **the** same convention.

12. Discharges to waters ~~subject to TMDL wasteload allocations with an approved total maximum daily load (TMDL)~~. Owners of facilities that are a source of **the** specified pollutant of concern to waters ~~for which where a total maximum daily load (TMDL) wasteload allocation has been approved prior to~~ **the** term of this permit shall ~~incorporate implement~~ measures and controls ~~into the SWPPP required by Part II~~ that are consistent with **the** assumptions and requirements of **the** TMDL. **The** department will provide written notification to **the** owner that a facility is subject to **the** TMDL requirements. If **the** TMDL establishes a numeric wasteload allocation that applies to discharges from **the** facility, **the** owner shall perform any required monitoring for the pollutant of concern in accordance with the monitoring frequencies in Part I A and implement measures necessary to meet that allocation.

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At permit reissuance, the permittee shall submit a demonstration with the registration statement to show the wasteload allocation is being met.

13. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

14. Inactive and unstaffed facilities (including temporarily inactive and unstaffed facilities).

a. A waiver of the process and stormwater monitoring and routine inspections may be exercised by the board department at a facility that is both inactive and unstaffed as long as the facility remains inactive and unstaffed. Such a facility is required to conduct ~~an annual~~ a site inspection in accordance with the requirements in Part II H 3 d. No DMR reports will be required to be submitted when a facility is approved as inactive and unstaffed.

b. An inactive and unstaffed sites waiver request shall be submitted to the board department for approval and shall include the name of the facility; the facility's VPDES general permit registration number; a contact person, ~~phone~~ telephone number, and email address (if available); the reason for the request; and the date the facility became or will become inactive and unstaffed. The waiver request shall be signed and certified in accordance with Part III K. If this waiver is granted, a copy of the request and the ~~board's~~ department's written approval of the waiver shall be maintained with the SWPPP.

c. To reactivate the site the permittee shall notify the department within 30 days or an alternate timeframe if written approval is received in advance from the board department, and all process and stormwater monitoring and routine inspections shall be resumed immediately. This notification must be submitted to the department, signed in accordance with Part III K, and retained on site at the facility covered by this permit in accordance with Part III B.

d. The board department retains the authority to revoke this waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to a water quality standards violation.

15. Process wastewater systems designed to operate as "no discharge" shall have no discharge of wastewater or pollutants, except in storm events greater than a 25-year, 24-hour storm event. In the event of such a discharge, the permittee shall report an unusual or extraordinary discharge per Part III H of this permit. No sampling or DMR is required for these discharges as they are considered to be discharging in emergency discharge conditions. These discharges shall not contravene the Water Quality Standards (9VAC25-260), ~~as adopted and amended by the board~~, or any provision of the State Water Control Law. Any other discharge from this type of system is prohibited, and shall be

reported as an unauthorized discharge per Part III G of this permit.

16. Best management practices for blasting. The permittee shall utilize best management practices to ensure that contaminants do not enter surface water as a result of blasting at the site.

17. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater or stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been submitted;

(3) All discharges associated with this facility have been covered by a VPDES individual permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board department agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by a VPDES individual permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification:

"I certify under penalty of law that all wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by

submitting this notice of termination, that I am no longer authorized to discharge nonmetallic mineral mining wastewater or stormwater in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be submitted to the DEQ regional office serving the area where the facility discharge is located and signed in accordance with Part III K.

18. Discharge requirements for emergency dewatering during flooded conditions. For covered facilities except for those in SIC 1475, the monthly average and daily maximum discharge limitations for TSS in Part I A 1 do not apply to mine pit dewatering discharges resulting from a storm equal to or greater than a 10-year, 24-hour storm event that has caused flood conditions within the mine such that normal operation at the active portion of the mine cannot continue. Rather, the TSS levels in such dewatering discharges shall not exceed a daily maximum of 100 mg/l during emergency dewatering. The operator must conduct such dewatering by pumping from the surface of the flooded area through a filtered mechanism to minimize the discharge of solids. The operator shall notify DEQ of such flooded conditions as an unusual or extraordinary discharge as described in Part III H of the permit. The emergency dewatering TSS limitation remains in effect until operation at the active portion of the mine resumes or the emergency dewatering activity has ceased, whichever occurs first. In no case shall the emergency dewatering TSS limit be applicable for more than 30 days from the beginning of the relevant 10-year, 24-hour storm event, unless otherwise approved by DEQ. The permittee shall take actions to maximize the settling of stormwater prior to and during dewatering. Cationic settling agents shall not be used during dewatering without prior DEQ approval of a demonstration that the use will not result in aquatic toxicity. During emergency dewatering, the permittee shall monitor for TSS daily and notify DEQ of any exceedances. Dewatering discharges shall not contravene the Water Quality Standards (9VAC25-260) or any provision of the State Water Control Law.

Part II Stormwater Management

A. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall-by-outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part III A.

2. When and how to sample.

a. In the case of snowmelt or a discharge from a stormwater management structure, a representative sample shall be taken at the time the discharge occurs.

b. For all other types of stormwater discharges, a minimum of one grab sample shall be taken resulting from a storm event that results in a discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the discharge monitoring report (DMR) that less than a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of discharge provided that the permittee explains with the DMR why a grab sample during the first 30 minutes was impracticable and maintains that documentation with the SWPPP.

B. Representative outfalls. If a facility has two or more exclusively stormwater outfalls that discharge substantially identical effluents, based on similarity of industrial activity, significant materials, frequency of discharges, and management practices and activities within the area drained by the outfalls, then the permittee may submit information with the registration statement substantiating the request for only one DMR to be issued for the outfall to be sampled that represents one or more substantially identical outfalls monitor the effluent stormwater of just one of the outfalls and report that the observations also apply to the substantially identical outfall. The permittee shall document representative outfalls in the SWPPP and list on the DMR of the outfall to be sampled all outfall locations that are represented by the discharge. The representative outfall monitoring provisions apply to Part I A 2 a monitoring and quarterly visual monitoring.

The permittee must include the following information in the SWPPP:

1. The locations of the outfalls; and
2. An evaluation, including available monitoring data, indicating why the outfalls are expected to discharge substantially identical effluents.

C. Sampling waivers. When a permittee is unable to conduct quarterly stormwater monitoring required under Part I A 2 b within the specified sampling period due to no measurable storm event discharge or adverse weather conditions, documentation shall be submitted explaining the permittee's inability to conduct the stormwater monitoring. The documentation must include the dates and times that the outfalls were viewed and sampling was attempted. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane,

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tornadoes, or electrical storms,—etc.). Acceptable documentation includes National Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data. All documentation shall also be maintained with the SWPPP. This waiver is not applicable to annual monitoring required under Part I A 2 a.

D. Stormwater pollution prevention plans (SWPPP). An SWPPP shall be developed and implemented for the facility. The plan shall include best management practices (BMPs) that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all stormwater discharges from the facility. The SWPPP shall also include all control measures necessary for the stormwater discharges to meet applicable water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents, such as an erosion and sediment control plan, a mine drainage plan as required by the Virginia Division of Mineral Mining, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the federal Clean Water Act, or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II H (contents of SWPPP). All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of Part II H, the permittee must develop the missing SWPPP elements and include them in the required SWPPP.

E. Deadlines for SWPPP preparation and compliance.

1. Owners of existing facilities ~~that were covered under the 2014 Nonmetallic Mineral Mining General Permit~~ that are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 60 days of the ~~board~~ department granting coverage under this permit.
2. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that elect to be covered under this general permit shall prepare and implement the SWPPP prior to submitting the registration statement.
3. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of ownership change.
4. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

F. Signature and SWPPP review.

1. The SWPPP shall be signed in accordance with Part III K (signatory requirements), and be retained on site at the facility covered by this permit in accordance with Part III B (records) of this permit. When there are no on-site buildings or offices in which to store the plan, it shall be kept at the nearest company office.

2. The permittee shall make the SWPPP, routine inspection documentation, or other information available to the department upon request.

3. The director, or an authorized representative, may notify the permittee at any time that the SWPPP, BMPs, or other components of the facility's stormwater program do not meet one or more of the requirements of this part. Such notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. Within 60 days of such notification from the director, or as otherwise provided by the director, or an authorized representative, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

G. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:

1. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;
2. Routine inspections determine that there are deficiencies in the BMPs;
3. Inspections by local, state, or federal officials determine or any other process, observation, or event results in a determination that modifications to the SWPPP are necessary;
4. There is a spill, leak, or other release at the facility; or
5. There is an unauthorized discharge from the facility; or
6. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility.

SWPPP modifications shall be made within 60 calendar days after discovery, observation, or an event requiring an SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II H 3 b (preventative maintenance)) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the

release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

H. Contents of SWPPP. The SWPPP shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify the staff individuals by name or title who comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

2. Summary of potential pollutant sources. The SWPPP shall identify where industrial materials or activities at the facility are exposed to stormwater. The description shall include:

- a. Site map. The site map shall document:

- (1) An outline of the drainage area of each stormwater outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in stormwater run-off, surface water bodies, locations where materials are exposed to precipitation, locations where major spills or leaks identified under Part II H 2 c (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle or equipment degreasing, cleaning areas, loading or unloading, locations used for the treatment, storage or disposal of wastes and wastewaters, liquid storage tanks, processing areas, and storage areas. The map must indicate all outfall locations. The types of discharges contained in the drainage areas of the outfalls must be indicated either on the map or in an attached narrative.

- (2) For each area of the facility that generates stormwater discharges associated with industrial activity, locations of stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow and an identification of the types of pollutants that are likely to be present in stormwater discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced, or discharged; the likelihood of contact with stormwater; and history of significant spills or leaks of toxic or hazardous pollutants. Flows with a potential for causing erosion shall be identified.

- b. Inventory of exposed materials. A list of the industrial materials or activities, including material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, by-products, final products, and waste products. Material handling activities include the

storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product.

- c. Spills and leaks. A list of significant spills and leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a stormwater conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

- d. Sampling data. A summary of existing stormwater sampling data taken at the facility. The summary shall include, at a minimum, any data collected during the previous three years.

3. Stormwater controls. Control measures shall be implemented for all areas identified in Part II H 2 b (inventory of exposed materials) to prevent or control pollutants in stormwater discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to stormwater. The BMPs shall also address the following minimum components, including a schedule for implementing such controls:

- a. Good housekeeping. Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to stormwater discharges. The SWPPP shall describe procedures performed to minimize contact of materials with stormwater runoff. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, vehicle fueling and maintenance areas, loading or unloading areas, and vehicle entrance and exits. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants in stormwater. The permittee shall sweep or vacuum paved surfaces of the site that are exposed to stormwater at regular intervals or use other equivalent measures to minimize the potential discharge of these materials in stormwater. Indicate in the SWPPP the frequency of sweeping, vacuuming, or other equivalent measures.

- b. Preventive maintenance. A preventive maintenance program shall involve regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, spills, and other releases. All BMPs identified in the SWPPP shall be maintained in effective operating condition. The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance and observation of all BMPs and shall include a description of the back-up practices that are in place should a run-off event occur while a BMP is off line

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or not operating effectively. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained). If site inspections required by Part II H 3 d (routine facility inspections) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the dates of regular maintenance, dates of discovery of areas in need of repair or replacement, dates for repairs, dates that the BMPs returned to full function, and the justification for an extended maintenance or repair schedules. The maintenance program shall require periodic removal of debris from discharge diversions and conveyance systems. Permittees using settling basins to control their effluents must provide maintenance schedules for such basins in the SWPPP.

c. Spill prevention and response procedures. The SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks, including barriers between material storage and traffic areas, secondary containment provisions, procedures for material storage and handling, response procedures for notification of appropriate facility personnel, emergency agencies, and regulatory agencies and procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the pollution prevention team. Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and in other locations where it will be readily available.

d. Routine facility inspections.

(1) Personnel who are familiar with the mining activity, the best management practices, and the SWPPP shall be identified to conduct routine facility inspections. Such inspections must include all areas where industrial materials or activities are exposed to stormwater as identified in Part II H 2 b (inventory of exposed materials), including material storage and handling areas, areas where aggregate is stockpiled outdoors, liquid storage tanks, hoppers or silos, material handling vehicles, equipment, and processing areas; off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site; vehicle and equipment maintenance areas and cleaning and fueling areas; best management practices; and discharge points.

(2) The inspection frequency shall be specified in the SWPPP based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly. Inspections of best management practices shall include inspection of stormwater discharge diversions, conveyance systems, sediment control and collection systems, containment structures, vegetation, serrated slopes, and benched slopes to determine their adequacy and effectiveness, the integrity of control structures, if soil erosion has occurred, or if there is evidence of actual or potential discharge of contaminated stormwater.

(3) Site inspection and best management practices inspection results must be documented and maintained on-site with the SWPPP.

(4) A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Such actions must include updating pollution sources, updating pollution prevention measures and controls, and updating the SWPPP as appropriate based on information developed during the inspections.

(5) The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

e. Employee training. Employee training shall be conducted at least annually at active mining sites and at those temporarily inactive sites that are staffed. Employee training programs shall inform personnel responsible for implementing activities identified in the SWPPP or otherwise responsible for stormwater management at all levels of responsibility of the components and goals of the stormwater pollution prevention plan. Training should address topics such as spill response, good housekeeping, and material management practices. All employee training shall be documented in the SWPPP.

f. Recordkeeping and internal reporting procedures. A description of incidents, such as spills, or other discharges, along with other information describing the quality and quantity of stormwater discharges, shall be included in the SWPPP required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the SWPPP. Ineffective best management practices must be recorded and the date of their corrective action noted in the SWPPP.

g. Sediment and erosion control. The plan shall identify areas that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, or stabilization BMPs to prevent or control on-site and off-site erosion and sedimentation.

h. Management of runoff. The SWPPP shall describe the stormwater runoff management practices (i.e., permanent structural BMPs) for the facility. These types of BMPs are

typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from **the** site. Appropriate measures may include: vegetative swales and practices, reuse of collected stormwater (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention or retention devices.

I. Authorized nonstormwater discharges. **The** following nonstormwater discharges are authorized by this permit:

1. Discharges from emergency firefighting activities or firefighting training activities managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of **the** Code of Virginia;
2. Fire hydrant flushing, managed in a manner to avoid an instream impact;
3. Potable water, including water line flushing, managed in a manner to avoid instream impact;
4. Uncontaminated condensate from air conditioners, coolers, and other compressors and from **the** outside storage of refrigerated gases or liquids;
5. Irrigation drainage;
6. Landscape watering, provided all pesticides, herbicides, and fertilizers have been applied in accordance with approved labeling;
7. Routine external building washdown that does not use detergents or hazardous cleaning products and is managed in a manner to avoid an instream impact;
8. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed). Pavement wash waters shall be managed in a manner to avoid instream impacts;
9. Uncontaminated groundwater or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials; and
11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of **the** facility, but not intentional discharges from **the** cooling tower (e.g., "piped" cooling tower blowdown or drains).

Part III

Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of **the** monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods

approved by **the** U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

- a. **The** date, exact place, and time of sampling or measurements;
- b. **The** individuals who performed **the** sampling or measurements;
- c. **The** dates and times analyses were performed;
- d. **The** individuals who performed **the** analyses;
- e. **The** analytical techniques or methods used; and
- f. **The** results of such analyses.

2. **The** permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete **the** registration statement for this permit, for a period of at least three years from **the** date of **the** sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during **the** course of any unresolved litigation regarding **the** regulated activity or regarding control standards applicable to **the** permittee, or as requested by **the** ~~board~~ department.

C. Reporting monitoring results.

1. **The** permittee shall submit **the** results of **the** monitoring required by this permit not later than **the** 10th day of **the** month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to **the** department's regional office.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by **the** department. Following notification from **the** department of **the** start date for **the** required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to **the** department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between **the** notification from **the** department and **the** date

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after which such forms and reports must be submitted electronically.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the ~~board~~ department may request to determine whether cause exists for terminating coverage under this permit or to determine compliance with this permit. The ~~board~~ department may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from its discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

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

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

G. Reports of unauthorized discharges. Any permittee ~~who~~ that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F (unauthorized discharges); or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said

discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge, including a bypass or upset, should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify (see ~~NOTE in~~ Part III I 3), in no case later than 24 hours, the department after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include any discharge resulting from:

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

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.
 - a. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:
 - (1) Any unanticipated bypass; and

(2) Any upset that causes a discharge to surface waters.
b. A written report shall be submitted within five days and shall contain:

- (1) A description of the noncompliance and its cause;
- (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: 3. The immediate (within 24 hours) reports required in Part III G, H, and I may shall be made to the department's regional office. Reports may be made by telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx> <https://www.deq.virginia.gov/get-involved/pollution-response> (online reporting preferred). For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement the online portal shall be used. For emergencies, call the Virginia Department of Emergency Services maintains a 24-hour telephone service Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the federal Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the federal Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject

neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit registration process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making capital investment recommendations; and initiating and directing other comprehensive measures to assure ensure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

c. **The** written authorization is submitted to **the** department.

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

4. Certification. Any person signing a document under Part III K 1 or 2 shall make **the** following certification:

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

L. Duty to comply. **The** permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of **the** State Water Control Law and **the** federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of **the** State Water Control Law but not **the** federal Clean Water Act. Permit noncompliance is grounds for enforcement action, for permit coverage termination, or for denial of permit coverage.

M. Duty to reapply. If **the** permittee wishes to continue an activity regulated by this permit after **the** expiration date of this permit, **the** permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new registration statement at least 60 days before **the** expiration date of **the** existing permit, unless permission for a later date has been granted by **the** ~~board~~ department. **The** ~~board~~ department shall not grant permission for registration statements to be submitted later than **the** expiration date of **the** existing permit.

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

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

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

Q. Proper operation and maintenance. **The** permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by **the** permittee to achieve compliance with **the** conditions of this permit. Proper operation and maintenance also ~~includes~~ include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires **the** operation of back-up or auxiliary facilities or similar systems that are installed by **the** permittee only when **the** operation is necessary to achieve compliance with **the** conditions of this permit.

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

S. Duty to mitigate. **The** permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or **the** environment.

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

U. Bypass.

1. "Bypass" means **the** intentional diversion of waste streams from any portion of a treatment facility. **The** permittee may allow any bypass to occur that does not cause effluent

limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.

2. Notice.

- a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted if possible at least 10 days before the date of the bypass.
- b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (reports of noncompliance).

3. Prohibition of bypass.

- a. Bypass is prohibited, and the board department may take enforcement action against a permittee for bypass, unless:

- (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

- (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

- (3) The permittee submitted notices as required under Part III U 2.

- b. The board department may approve an anticipated bypass, after considering its adverse effects, if the board department determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the cause of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part III I; and
- d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

X. Permit actions. Permit coverage may be terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property unless permission for a later date has been granted by the department;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board department does not notify the existing permittee and the proposed new permittee of its intent to deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any

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provision of this permit to any circumstance is held invalid, **the** application of such provision to other circumstances and **the** remainder of this permit shall not be affected thereby.

V.A.R. Doc. No. R22-7006; Filed April 27, 2023, 10:42 a.m.

Proposed Regulation

Title of Regulation: 9VAC25-780. Local and Regional Water Supply Planning (amending 9VAC25-780-10, 9VAC25-780-20, 9VAC25-780-30, 9VAC25-780-50, 9VAC25-780-60 through 9VAC25-780-120, 9VAC25-780-140, 9VAC25-780-150, 9VAC25-780-160, 9VAC25-780-180; adding 9VAC25-780-45, 9VAC25-780-55, 9VAC25-780-125; repealing 9VAC25-780-40, 9VAC25-780-130).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.38:1 of **the** Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: July 21, 2023.

Agency Contact: Hannah Somers, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 814-2780, or email hannah.somers@deq.virginia.gov.

Basis: Chapter 1105 of **the** 2020 Acts of Assembly directs **the** State Water Control Board to adopt regulations designating regional planning areas based primarily on river basins and states that **the** regulations shall identify **the** particular regional planning area in which each locality shall participate, and which local stakeholder groups shall or may participate in coordinated water resource planning. **The** amendments to §§ 62.1-44.36, 62.1-44.38, and 62.1-44.38:1 of **the** Code of Virginia also (i) require each locality to participate in cross-jurisdictional, coordinated water resources planning, and that each regional planning area submit a single jointly produced regional water supply plan, which shall clearly identify **the** region's water supply risks, propose cost-effective regional strategies to address these risks, and comply with all other applicable criteria and guidelines developed by **the** board; (ii) direct **the** board to predict **the** risk that each locality and region will experience water supply shortfalls; and (iii) require **the** board to direct **the** Department of Environmental Quality in its facilitation of regional planning efforts. Additionally, Chapter 331 of **the** 2022 Acts of Assembly requires **the** regulation to provide a mechanism for localities to request a change of a locality's designated regional planning area to an adjoining planning area that is based on water supply source, river basin, or existing or planned cross-jurisdictional relationship. Section 62.1-44.15 provides **the** board authority to promulgate this regulation.

Purpose: **The** purpose of **the** proposed amendments is to designate regional planning areas based primarily on river basins and to provide a framework to facilitate improved cross-jurisdictional regional planning as directed by Chapter 1105 of **the** 2020 Acts of Assembly. Water supply plans submitted

under **the** current regulation were largely submitted by a single locality or a single locality and any incorporated towns and cities within its boundaries. This approach results in localities planning within their own political boundaries, which may not represent **the** most efficient or effective way to address shared water sources that cross jurisdictional boundaries. Protecting water supplies protects public welfare.

Regional planning enables localities and other water users to assess water sources in **the** context of their shared use with others in **the** region. This approach will promote a more accurate assessment of water sources to meet demands into **the** future and will promote cost-effective regional projects and strategies to address water supply shortfalls and risks to water supply, such as drought, while also improving **the** capability of localities to more efficiently pursue new economic development opportunities that often require significant water capacity. Additionally, **the** proposed amendments will allow interested parties to participate more directly.

Substance: **The** proposed amendments (i) establish regional planning areas, (ii) identify **the** particular regional planning area in which each locality shall participate, (iii) identify a procedure for localities to request a change to **the** locality's planning area, and (iv) require localities to invite stakeholder groups to participate in coordinated resource planning. **The** amendments also incorporate language to address new statutory requirements that **the** Department of Environmental Quality facilitate regional water planning efforts, ensure localities coordinate in **the** development of water supply plans, prioritize allocation of funding to localities that participate in regional planning, and provide estimates of water supply shortfalls for each locality and region. **The** amendments require that each regional water supply plan clearly identify **the** regional planning area's water supply risks and propose regional strategies to address those risks. **The** proposed amendments revise **the** existing water supply plan development, submission, and review procedures to accommodate regional plans and other new requirements and clarify **the** roles of localities, stakeholders, and **the** department in **the** regional planning process.

Issues: Advantages from **the** proposed regulatory change for **the** public, including private citizens and businesses, include a regional water supply plan scope that addresses sources within a basin that cross jurisdictional boundaries, increased opportunities to participate in **the** water supply planning process, **the** potential for more resilient and efficient water supply systems that include regional projects in any evaluation of future infrastructure development, and more consideration of potential risks to water supply beyond deficits. Planning that includes coordinated evaluation of common regional water sources at **the** regional scale allows for improved optimization of **the** use of these resources and may increase water availability for future water needs. There are no disadvantages to **the** public.

Advantages for the agency and Commonwealth include the potential for water supply systems to be more resilient to drought and other water supply risks, requiring fewer emergency related permit modifications or variances. Planning that considers cumulative demands and water supply risks, and that promotes regional strategies to address water supply deficits and risks, establishes local certainty, allowing faster response to economic development opportunities. Effects of this could include smoother and more efficient permit application processes for water supply projects, fewer variances or emergency actions due to drought or other acute conditions, and more efficient and cost effective use of state and local resources with respect to water supply infrastructure. The proposed amendments will reduce the number of plan submittals from 48 under the current framework to 26, potentially reducing the staff time required for certain administrative tasks related to plan development and review. There are no disadvantages to the agency or the Commonwealth.

Advantages to the regulated community, including local governments, water authorities, self-supplied water users, and other stakeholders that elect to participate in the planning process, include a more robust water supply plan that addresses shared water resources that cross local government boundaries and considers water supply risks and strategies. Clarifications to the plan development, submittal, and review process will address areas of concern or confusion identified during implementation of the existing regulation. Stakeholders that choose to participate in the plan development have more opportunities to ensure their needs and concerns are considered. Planning regionally may also assist localities in identifying or strengthening regional partnerships to better manage new demands associated with growth or unexpected increases in demand from new economic development opportunities. Potential disadvantages to this group include eliminating the ability to plan locally for localities that prefer that approach and the potential for additional administrative complexity in plan development as a result of planning with a greater number of localities and stakeholders.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 1105 of the 2020 Acts of Assembly,² the State Water Control Board (Board) proposes to amend 9VAC25-780 Local and Regional Water Supply Planning to (i) establish regional water supply planning areas, (ii) identify the particular regional planning area in which each locality shall participate, (iii) require that regional plans identify water supply risks and propose regional strategies to address them, (iv) list risks for regional planning units to consider, and (v) add new requirements for increased stakeholder involvement.

Pursuant to Chapter 331 of the 2022 Acts of Assembly,³ the proposed regulation includes a mechanism for localities to request a change of its designated regional planning area to an adjoining planning area that is based on water supply source, river basin, or existing or planned cross-jurisdictional relationship. The Board also proposes new and amended text for several operational items such as how disagreements or lack of consensus among local governments within a regional planning area should be handled, as well as clarifications and updates in terminology.

Background. The Local and Regional Water Supply regulation (9VAC25-780) was promulgated in 2005 pursuant to Chapter 227 of the 2003 Acts of Assembly,⁴ which required the Board to establish a comprehensive water supply planning process for the development of local, regional, and state water supply plans. This legislative action and subsequent regulation were in response to the 2001-2002 drought, during which many water supplies within the Commonwealth experienced inadequate supply to meet demands.⁵

Under the current regulation, all localities are required to submit a plan, but they can choose to develop a plan independently (local plan) or they may choose to plan regionally with other localities (regional plan). In total, 48 water supply plans were submitted in 2008, of which 10 were local plans and 38 were regional plans. In contrast to the proposed amendments, the current planning regions were not specifically determined based on a river basin or with respect to shared sources of water supply.⁶

Each local and regional plan must be reviewed no later than five years after the Board last determined that it was in compliance. If this review indicates that circumstances have changed, or new information has been made available indicating that water demands would not be met by the alternatives contained in the plan, then a revised plan must be submitted to the Board. These circumstances may be caused by changes in demands, the availability of the anticipated source, cumulative impacts, in-stream beneficial uses, or other factors.⁷ If a review indicates that circumstances have not changed sufficiently to warrant a revised plan, then the locality or regional planning unit must notify the Department of Environmental Quality (DEQ) that the existing plan is still in effect. Plans are to be reviewed, revised, and resubmitted to DEQ every 10 years after the date of last approval, regardless of whether circumstances have changed. According to DEQ, all localities complied in 2013 and 2018.

Estimated Benefits and Costs:

Regional Planning Areas. As mentioned, the current planning regions were not specifically determined based on river basin or with respect to shared sources of water supply. Planning based on river basin, as would occur under the proposed regulation, should result in a more robust plan that addresses shared resources across localities. It may reduce future conflicts over shared resources, permitting challenges, and improve cost-efficiency of new projects via regional

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cooperation. Such outcomes are beneficial to managing the resources in a manner that meets water supply needs.

Water Supply Risks and Regional Strategies. The statutorily mandated requirement specified in the regulation that regional plans identify water supply risks and propose regional strategies to address them may be consequential, to the extent that these items have not been already addressed in plans. Having water supply risks and proposed regional strategies addressed in plans could improve the ability of the region and the localities that comprise them to address water supply problems in the future. DEQ estimates that fulfilling this requirement would require approximately 10 to 20 additional hours of staff time for each locality during each plan development cycle (once every five to 10 years). Some localities are unlikely to have the in-house staff that can perform this work and would need to hire consultants. DEQ does not have an estimate for the associated cost but states that it would be a small component of the overall plan development effort and is unlikely to significantly increase cost.

Stakeholders and Public Participation. The current regulation states that there must be a local public hearing during the development of the local (or regional) plan. It also states that the plan shall include a record of the local public hearing, a copy of all written comments, and the submitter's response to all written comments received. The Board proposes to add that "The regional planning unit shall give due consideration to public comments and may revise the draft regional water supply plan."

The current definition of "regional planning unit" is: "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."

The board proposes to amend this definition to read "a collection of local governments, water authorities, and participating stakeholders that shall develop and submit a regional water supply plan. Planning district commissions are encouraged to participate in the regional planning unit."

The current regulation does not address stakeholders. The Board proposes to add the following definition for "stakeholders": "includes industrial and agricultural water users, public water authorities, private water suppliers, developers and economic development organizations, and conservation and environmental organizations."

Further, the Board proposes to specify that "Each local government shall make reasonable efforts to consult and coordinate with all community water systems and self-supplied users that utilize more than 300,000 gallons of water in any month, including agricultural, industrial, and power generation users within its jurisdiction during the preparation of regional water supply plans. Regional planning units shall develop a

process for other stakeholder participation in the preparation of a regional water supply plan." and "The following documents and supporting materials shall be appended to and submitted with the regional water supply plan. A summary of the processes used to ensure cross-jurisdictional coordinated water resource planning between local governments and to ensure stakeholder consultation including a list of local governments and stakeholders that participated during the regional water supply plan development, including the process developed."

Thus, the proposed regulation does appear to require more opportunity for participation from stakeholders in the development of water supply plans than does the current regulation. This may improve the information upon the plans are based and potentially increase support from affected entities. It would also likely require additional staff time for local governments, although the amount of time is not known.

Businesses and Other Entities Affected. All governments for counties, cities, and incorporated towns in the Commonwealth would be affected by the proposed amendments. All users of water may be affected. Stakeholders such as industrial and agricultural water users, public water authorities, private water suppliers, developers and economic development organizations, and conservation and environmental organizations would be particularly affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁸ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As described, there will likely be some increase in costs for local governments related to (i) the requirement that regional plans identify water supply risks and propose regional strategies and (ii) the required increased stakeholder involvement. Because those new requirements essentially stem from the legislation, no adverse impact is indicated for the proposed regulation.

Small Businesses⁹ Affected.¹⁰ The proposed amendments do not appear to adversely affect small businesses.

Localities¹¹ Affected.¹² The proposal affects all localities and all local governments in the Commonwealth. Local governments that do not have the internal capacity to identify water supply risks and propose regional strategies to address them would be particularly affected.

Projected Impact on Employment. The proposed requirements for accommodating increased stakeholder participation and identifying water supply risks and propose regional strategies to address them would effectively require some additional staff time for local governments every five to 10 years, but the additional time is unlikely to require new staff. However, some consulting firms that provide services related to identifying water supply risks and proposing regional strategies to address them would likely gain some new business. If particular firms gain contracts for a substantial number of local governments, the demand may be enough to result in a small increase in employment.

Effects on the Use and Value of Private Property. The statutory requirement specified in the regulation that regional plans identify water supply risks and propose regional strategies to address them may result in some increased business for consulting firms that help identify such risks and strategies. These firms may thus increase moderately in value. The proposed amendments do not otherwise appear to directly affect real estate development costs.

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

²See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1105>

³See <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0331>

⁴See <https://lis.virginia.gov/cgi-bin/legp604.exe?031+ful+CHAP0227&031+ful+CHAP0227>

⁵Source: Department of Environmental Quality

⁶Ibid

⁷Source: 9VAC25-780-50.D <https://law.lis.virginia.gov/admincode/title9/agency25/chapter780/section50/>

⁸Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

⁹Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹⁰If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹¹"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹²Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to the 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:

Pursuant to Chapter 1105 of the 2020 Acts of Assembly and Chapter 331 of the 2022 Acts of Assembly, the proposed amendments (i) establish regional planning areas; (ii) identify the particular regional planning area in which each locality shall participate and a procedure for a locality to request a change to its planning area; (iii) require localities to invite stakeholder groups to participate in coordinated resource planning; (iv) incorporate language to address new statutory requirements that the Department of Environmental Quality facilitate regional water planning efforts, ensure localities coordinate in the development of water supply plans, prioritize allocation of funding to localities that participate in regional planning, and provide estimates of water supply shortfalls for each locality and region; (v) require that each regional water supply plan clearly identify the regional planning area's water supply risks and propose regional strategies to address those risks; (vi) revise the existing water supply plan development, submission, and review procedures to accommodate regional plans; and (vii) clarify the roles of localities, stakeholders, and the department in the regional planning process.

9VAC25-780-10. Application.

A. All ~~counties, cities and towns (hereinafter "local governments")~~ local governments in the Commonwealth of Virginia shall ~~submit a local water supply plan or shall participate in a regional planning unit in the submittal of a regional water supply plan to the board in accordance with this chapter~~ participate in cross-jurisdictional, coordinated water resource planning and shall develop and submit, with the other local governments within a regional planning area, a single jointly produced regional water plan to the board.

B. ~~The provisions of this regulation shall not affect any water supply project for which a permit application was submitted prior to January 1, 2003, to any state or federal agency. The provisions of this regulation shall not affect any water supply project for which To the extent any provision of this chapter is applicable to or otherwise affects an application for a permit, license, grant, loan, or other request for funding has been of any kind made to a state or federal agency prior to January 1, 2003, such application shall be subject to the version of this chapter in effect on the date the application is submitted.~~ All projects shall remain subject to applicable federal and state regulatory requirements.

C. ~~B.~~ Nothing in this chapter shall be construed as altering or authorizing any alteration of any existing surface water, ~~ground~~ water groundwater, or common law water rights; contractual

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rights or obligations relating to water supplies; or rights to freely enter into contracts or agreements relating to water supplies of any property owner within the Commonwealth local government, water authority, or person, except as required by federal or state law.

D. C. The review required by 9VAC25-780-140 shall not be a prerequisite for applying for a permit from the Commonwealth of Virginia for a water supply project.

9VAC25-780-20. Purpose of chapter.

The purpose of this chapter is to establish a comprehensive water supply planning process for the collection of certain data by localities and the development of local, regional, and state water supply plans. This process shall be designed to (i) ensure that adequate and safe drinking water is available to all citizens of the Commonwealth; (ii) encourage, promote, and protect all other beneficial uses of the Commonwealth's water resources; and (iii) encourage, promote, and develop incentives for alternative water sources, including but not limited to desalinization; and (iv) encourage the development of cross-jurisdictional water supply projects.

This chapter establishes the required planning process and criteria that local governments with the participation of other stakeholders shall use in the development of the local data and regional water supply plans.

9VAC25-780-30. Definitions.

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation chapter 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 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia; the Virginia Water Protection Permit Program Regulation, 9VAC25-210; and the Surface Water Management Area Regulation, 9VAC25-220, 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 has the meaning defined in 9VAC25-210-10 with respect to surface water and the meaning defined in 9VAC25-610-10 with respect to groundwater.

"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 Regulations (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 timeframe used by the locality local governments and regional planning units to project future water demand in accordance with 9VAC25-780-100 B.

"Regional planning area" means the geographical area as defined by 9VAC25-780-45 that is included in a regional water supply plan.

"Regional planning unit" means a collection of local governments who have voluntarily elected to, water authorities, and participating stakeholders that shall develop and submit a regional water supply 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. Planning district commissions are encouraged to participate in the regional planning unit.

"Regional water supply plan" means a water plan the document 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 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 by a regional planning unit, if applicable for a regional planning area in compliance with 9VAC25-780-50 D.

"Self-supplied user" means any person making a withdrawal of surface water or ground water groundwater 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.

"Stakeholder" includes industrial and agricultural water users, public water authorities, private water suppliers, developers and economic development organizations, and conservation and environmental organizations.

"State Water Resources and Supply Plan" is a plan developed to address the criteria of § 62.1-44.38 B of the Code of Virginia using information developed by local governments and used to develop regional water supply plans.

"Technical evaluation committee" means a committee of state agencies, including but not limited to the Virginia 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 Wildlife Resources, 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 beneficial uses resulting from proposed alternatives for meeting projected water demands.

"Unaccounted for losses water" 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 authority" means a water supply entity created under Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia.

"Water conservation" means practices, techniques, and technologies that improve the efficiency of water use.

"Water demand management" means plans for improving water use efficiency through 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 springs, reservoirs, or aquifers that serve as sources of water supplies.

"Water supply risk" refers to a future circumstance or event that may reasonably impair the ability of one or more local governments, water authorities, or community water systems in the water planning area to meet current or projected water demand within the planning period. Water supply risks do not include (i) minor, infrequent, and temporary interruptions to the available water supply or water quality that may be remedied through the normal operation and maintenance of water supply systems; (ii) projected deficits in water supplies

identified in accordance with the requirements of 9VAC25-780-100 I; or (iii) potential events or circumstances that are not reasonably foreseeable to occur within the planning period.

9VAC25-780-40. Program development. (Repealed.)

~~Local governments shall develop programs for local or regional water plans that are necessary to comply with this chapter. Local governments shall consult and coordinate with all community water systems in the planning area during the preparation of local or regional programs. Community water systems within the planning area shall cooperate and participate with the locality during preparation of the local program. Counties, cities, and towns are encouraged to develop regional programs. Local programs shall be designed to (i) ensure that adequate and safe drinking water is available, (ii) encourage and protect all beneficial uses, (iii) encourage and promote alternative water sources, and (iv) promote conservation.~~

9VAC25-780-45. Designation of Regional Planning Areas.

A. Regional planning areas are designated in subsection B of this section. Incorporated towns not listed in subsection B of this section shall participate in the same regional planning area as the county within which they are located.

B. The board designates the following regional planning areas:

1. The Big Sandy and Upper Tennessee Rivers 1 planning area encompasses the Counties of Lee, Scott, and Wise; and the City of Norton.

2. The Big Sandy and Upper Tennessee Rivers 2 planning area encompasses the Counties of Buchanan, Dickenson, Russell, Smyth, Tazewell, and Washington; and the City of Bristol.

3. The Chowan River 1 planning area encompasses the Counties of Brunswick, Lunenburg, Nottoway, and Prince Edward.

4. The Chowan River 2 planning area encompasses the Counties of Greenville, Surry, and Sussex; and the City of Emporia.

5. The Eastern Shore planning area encompasses the Counties of Accomack and Northampton.

6. The Middle James River 1 planning area encompasses the Counties of Albemarle, Buckingham, Fluvanna, Greene, and Louisa; and the City of Charlottesville.

7. The Middle James River 2 planning area encompasses the Counties of Amherst, Appomattox, Campbell, and Nelson; and the City of Lynchburg.

8. The Middle James River 3 planning area encompasses the Counties of Amelia, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, Powhatan, and Prince

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George; and the Cities of Colonial Heights, Hopewell, Petersburg, and Richmond.

9. The New River 1 planning area encompasses the Counties of Bland, Giles, Montgomery, and Pulaski; and the City of Radford.

10. The New River 2 planning area encompasses the Counties of Carroll, Floyd, Grayson, and Wythe; and the City of Galax.

11. The Northern Coastal Plain 1 planning area encompasses the Counties of Lancaster, Northumberland, Richmond, and Westmoreland.

12. The Northern Coastal Plain 2 planning area encompasses the Counties of Essex, King and Queen, Mathews, and Middlesex.

13. The Northern Coastal Plain 3 planning area encompasses the Counties of Caroline and King George.

14. The Northern Piedmont 1 planning area encompasses the Counties of Culpeper, Fauquier, Madison, Orange, and Rappahannock.

15. The Northern Piedmont 2 planning area encompasses the Counties of Spotsylvania and Stafford; and the City of Fredericksburg.

16. The Northern Virginia planning area encompasses the Counties of Fairfax, Loudoun, and Prince William; and the Cities of Alexandria, Arlington, Fairfax, Falls Church, Manassas, and Manassas Park.

17. The Roanoke River 1 planning area encompasses the Counties of Bedford, Franklin, and Roanoke; and the Cities of Bedford, Roanoke, and Salem.

18. The Roanoke River 2 planning area encompasses the Counties of Henry, Patrick, and Pittsylvania; and the Cities of Danville and Martinsville.

19. The Roanoke River 3 planning area encompasses the Counties of Charlotte, Halifax, and Mecklenburg.

20. The Shenandoah River 1 planning area encompasses the Counties of Augusta and Rockingham; and the Cities of Harrisonburg, Staunton, and Waynesboro.

21. The Shenandoah River 2 planning area encompasses the Counties of Clarke, Frederick, Page, Shenandoah, and Warren; and the City of Winchester.

22. The Southeast Virginia planning area encompasses the Counties of Isle of Wight and Southampton; and the Cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach.

23. The Upper James River 1 planning area encompasses the Counties of Alleghany, Bath, and Highland; and the City of Covington.

24. The Upper James River 2 planning area encompasses the Counties of Botetourt, Craig, and Rockbridge; and the Cities of Buena Vista and Lexington.

25. The York and James River 1 planning area encompasses the Counties of Charles City, King William, and New Kent.

26. The York and James River 2 planning area encompasses the Counties of Gloucester, James City, and York; and the Cities of Hampton, Newport News, Poquoson, and Williamsburg.

C. A local government may request that the department change its designated regional planning area to an adjoining planning area. The request shall be in writing and shall demonstrate that the local government shares common water supply sources, river basin, or existing or planned cross-jurisdictional relationships with the planning area it proposes to join. The department will provide notice of the request to all designated representatives of local governments in the two affected regional planning areas. If no objections are received by the department within 30 days of notifying the designated representatives, the department shall approve the request. If one or more objections are received, the department shall approve or deny the request after considering the positions of the requesting and objecting parties in light of the purpose and objectives of this chapter. The department shall provide notice of any action to approve or deny a request to modify a regional planning area concurrently to the requesting local government and all other designated representatives in the affected regional planning areas. Department action approving a request shall be effective on the date the notice is provided.

9VAC25-780-50. Preparation of local information and regional water supply plan; submission of requirements for a program regional water supply plan.

A. Local governments must adopt a local program as defined in this section, including any revisions to comprehensive plans, water supply plans, water and sewer plans, and other local authorities necessary to implement this chapter. A local public hearing consistent with § 15.2-1427 of the Code of Virginia is required during the development of the local program. The public hearing may be combined with other public hearings that may be required. Each locality in a regional planning area shall assist its regional planning unit in developing and submitting a single jointly produced regional water supply plan to the department within five years from (insert the effective date of the regulation). To meet this requirement, local governments must complete the following for use by the regional planning unit:

1. Prepare water source information from its jurisdiction that complies with 9VAC25-780-70.

2. Prepare existing water use information from its jurisdiction that complies with 9VAC25-780-80. This information must include a review of water reporting data provided by the department and supplemented to the extent

practicable, with any locally known omissions of water users and service area maps for public water utilities.

3. Prepare existing water resource information from its jurisdiction that complies with 9VAC25-780-90.

4. Prepare a 30-year demand projection of water demand and any alternatives for deficits in meeting this demand from existing sources of supply for its jurisdiction that complies with 9VAC25-780-100.

5. Prepare water demand management information from its jurisdiction that complies with 9VAC25-780-110.

6. Prepare a minimum three-stage drought response and contingency plan for its jurisdiction consistent with local sources of supply and water use patterns that complies with 9VAC25-780-120.

B. All local governments shall submit a local program to the department in accordance with the following schedule:

1. Local governments with populations in excess of 35,000 persons based on the most recent U.S. Census shall do so no later than November 2, 2008.

2. Local governments with populations in excess of 15,000 persons but no more than 35,000 persons based on the most recent U.S. Census shall do so no later than November 2, 2009.

3. Local governments with populations less than or equal to 15,000 persons based on the most recent U.S. Census shall do so no later than November 2, 2010.

4. Notwithstanding the above, local governments may elect to participate in the submittal of regional water supply plans. By November 2, 2008, local governments participating in a regional plan shall provide notice to the department of the intent to participate in a regional plan and shall include the names of the other participating localities. Such regional plans shall be submitted no later than November 2, 2011.

Nothing in this section shall be construed as limiting the submittal of local or regional water supply plans before the date when such plans are due. In developing a regional water supply plan, regional planning units shall use the following process:

1. Each local government and water authority shall designate a representative and one or more alternates to represent its interests in the regional planning unit by submitting the names and contact information of such individuals to the department within (insert date 60 days from the effective date of the regulation). Local governments and alternates may jointly represent the local government and any water authority created by the local government. The department will collect and distribute the contact information for the designated representatives and alternates, and a list of the available data for all registered community water systems and self-supplied users that utilize more than 300,000

gallons of water in any month, to the members of each respective planning unit. The department shall maintain a current list of designated representatives and alternates and shall make the list publicly available to facilitate coordinated water supply planning.

2. The department will schedule and convene a kickoff meeting for each regional planning unit to provide guidance on the regional water plan development process, requirements, and timelines. The department will provide notice of the kickoff meeting, at a minimum, to (i) each designated representative for the regional planning unit; (ii) any other community water systems and self-supplied users that utilize more than 300,000 gallons of water in any month, including agricultural, industrial, and power generation users within the respective regional planning area; and (iii) any planning district commission whose territory includes all or part of the regional planning area. A kickoff meeting will be convened within (insert date 180 days from the effective date of this regulation). On the department's initiative or at the request of any designated representative, the department will schedule a kickoff meeting in preparation for revising a regional water supply plan in accordance with subsections I and J of this section.

3. Subdivisions B 1 and B 2 of this section shall not apply to any regional planning unit in which a planning district commission notifies the department that it will coordinate local government participation in the regional water supply plan development process in accordance with its authority under Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 of the Code of Virginia. Such notice may be submitted by any planning district commission whose territory includes the entire regional planning area. If the regional planning area embraces the territory of more than one planning district commission, a joint notice may be submitted by or on behalf of all such planning district commissions.

4. Each local government shall make reasonable efforts to consult and coordinate with all community water systems and self-supplied users that utilize more than 300,000 gallons of water in any month, including agricultural, industrial, and power generation users within its jurisdiction during the preparation of regional water supply plans. Regional planning units shall develop a process for other stakeholder participation in the preparation of a regional water supply plan.

5. To the extent practicable, regional water supply plans shall be consistent with the goals of § 62.1-44.38:1 A of the Code of Virginia to (i) ensure that adequate and safe drinking water is available; (ii) encourage and protect all beneficial uses; (iii) encourage and promote alternate water sources, including desalinization; (iv) promote water conservation; and (v) encourage the development of cross-jurisdictional water supply projects.

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C. Local programs shall contain the elements listed below governments shall be responsible for collecting and compiling the information from within their locality necessary to comply with these requirements. This Any information may required to be collected, compiled, or provided by a local government shall be derived from existing, readily available information and additional detailed. Additional studies shall not be required. Information is readily available to a local government if it is (i) in the possession of the local government; (ii) provided by the department; (iii) available from a website or electronic database known to and accessible by the local government in an appropriate format; or (iv) provided by a third party in response to a written request from the local government. The regional water supply plan shall document any known information gaps.

D. Regional water supply plans shall contain the following elements:

1. A description of existing water sources in accordance with the requirements of 9VAC25-780-70;
2. A description of existing water use in accordance with the requirements of 9VAC25-780-80;
3. A description of existing water resource conditions in accordance with the requirements of 9VAC25-780-90;
4. An assessment of projected water demand in accordance with the requirements of 9VAC25-780-100;
5. A description of water management actions in accordance with the requirements of 9VAC25-780-110 and 9VAC25-780-120;
6. An identification of water supply risks and regional strategies to address identified risks in accordance with the requirements of 9VAC25-780-125;
7. A statement of need for the regional planning unit in accordance with the requirements of 9VAC25-780-130 9VAC25-780-100;
7. 8. An alternatives analysis that identifies potential alternatives to address projected deficits in water supplies in accordance with the requirements of 9VAC25-780-130; 8. 9VAC25-780-100; and
9. A map or maps identifying important elements of the program discussed in the water supply plan that may include existing environmental resources, existing water sources, significant existing water uses, and proposed new sources;
9. A copy of the adopted program documents including any local plans or ordinances or amendments that incorporate the local regional program elements required by this chapter;
10. A resolution approving the plan from each local government that is party to the plan; and

11. A record of the local public hearing, a copy of all written comments and the submitter's response to all written comments received.

D. All local programs shall be reviewed no later than five years after a compliance determination by the board E. Except as provided in subsection F of this section, a draft regional water supply plan shall not be deemed final and eligible for submission to the department until:

1. The public participation process in 9VAC25-780-55 has been completed; and
2. Each of the governing bodies of the local governments in the regional planning area has adopted a resolution authorizing the submission of the plan by the regional planning unit on the local government's behalf and provided a copy of the resolution to the regional planning unit.

F. If a local government fails or refuses to timely adopt the resolution referenced in subsection E of this section, the regional planning unit may provide written notice to the department identifying such local government. The regional planning unit may submit the water supply plan without a local government's authorization 60 days after the notice is provided to the department.

G. Regional water supply plans shall reflect the consensus of the local governments and water authorities in the regional planning unit. The regional planning units shall attempt to resolve any disagreement to produce a consensus. Any disagreements among local governments or water authorities that cannot be resolved through the plan development process shall be documented in the plan.

H. The following documents and supporting materials shall be appended to and submitted with the regional water supply plan.

1. A copy of supporting documents including any revisions to comprehensive plans, water supply plans, water and sewer plans, and other local ordinances necessary to implement the regional water supply plan;
2. Copies of any drought response and contingency plans required by 9VAC25-780-120;
3. A resolution approving the regional water supply plan from each local government;
4. A copy of all written comments and a response to all written comments received as required by 9VAC25-780-55; and
5. A summary of the processes used to ensure cross-jurisdictional coordinated water resource planning between local governments and to ensure stakeholder consultation, including a list of local governments and stakeholders that participated during the regional water supply plan development, including the process developed in accordance with subdivision B 4 of this section. Copies of any public

notices, written comments received, and responses to the comments shall be included. Other correspondence and documentation, such as invitations, meeting agendas, and outreach materials may be included and shall be provided upon request by the department.

I. No later than 180 days before the five-year anniversary of the most recent compliance determination by the board in accordance with 9VAC25-780-140 F. ~~Revised plans shall be submitted when,~~ each regional planning unit shall initiate a process to review the regional water supply plan. If this review indicates that circumstances have changed or new information has been made available that ~~will result in~~ impacts one or more local governments within a regional planning unit resulting in substantial changes in current or proposed sources, demands, or water demands demand deficits or water supply risks that ~~will were not be met by alternatives contained~~ considered in the regional water plan, the regional planning unit shall prepare a supplement to the regional water supply plan addressing such circumstances or changed information. ~~These~~ The supplement shall be submitted to the department no later than 180 days after the five-year anniversary of the most recent compliance determination. Such circumstances may be caused by include changes in demands, the availability of the anticipated source sources, cumulative impacts, in-stream beneficial uses, or other factors. In the case where the review by the local government or regional planning unit indicates that the circumstances have not changed sufficiently to warrant a revision of the water supply plan after five years, the locality regional planning unit shall notify the department that the information in the existing plan is still in effect the most current available on or before the five-year anniversary of the most recent compliance determination. The actions of each regional planning unit under this subsection shall reflect the consensus of its local governments. A supplement to a regional water supply plan need not be publicly noticed or approved by resolution of the local governments.

~~E. J.~~ Notwithstanding subsection ~~D~~ I of this section, all ~~local~~ programs regional water supply plans shall be reviewed, revised, and resubmitted to the department every 10 years after the date of last approval in accordance with procedures and requirements set forth in this chapter. Except in regional planning areas for which notice has been provided by a planning district commission in accordance with subdivision B 3 of this section, no later than 180 days before the 10-year anniversary of the most recent compliance determination by the board, the department shall schedule and convene a kickoff meeting to initiate the planning process for the development of the regional water supply plan. In regional planning areas for which notice has been provided by a planning district commission in accordance with subdivision B 3 of this section, the identified planning district commission shall convene a kickoff meeting no later than 180 days before the 10-year anniversary of the most recent compliance determination and shall invite the department to participate.

9VAC25-780-55. Public participation in regional water supply plans.

A. The draft regional water supply plan developed by the regional planning unit shall be publicly noticed once in a newspaper of general circulation in each county, city, and incorporated town in the regional planning area. A public notice in a newspaper of general circulation that covers multiple localities within a regional planning area shall satisfy this requirement for each local government included within that area of general circulation. The public notice shall include the following:

1. Brief description of the purpose of the draft regional water supply plan, including a list of all localities included in the regional planning area;
2. Identification of means for the public to obtain copies of the draft regional water supply plan in electronic and paper formats;
3. Announcement of a comment period of at least 30 days following the date of publication for interested persons to submit written comments to their respective local government;
4. Brief description of how to submit comments; and
5. Either (i) notice of a public informational meeting or (ii) a statement informing persons of their right to request a public informational meeting.

B. If 15 or more individual requests for a public informational meeting are received from commenters in any county, city, or incorporated town, the county, city, or incorporated town shall publish a second public notice of a public informational meeting to be held no sooner than 15 days from the date of the notice. Local governments may hold joint informational meetings.

C. A public informational meeting shall include a presentation summarizing the draft regional water supply plan and a reasonable opportunity for interested members of the public to offer comments or questions on the draft plan.

D. The local government shall accept any additional written comments received up to 15 days after the public informational hearing.

E. Written comments received by any local government shall be circulated to the designated representative for the other local governments in the regional planning area. Responses to public comments shall be prepared in either of the following ways, as determined by the regional planning unit:

1. Each local government shall prepare a written summary of any comments it has received and a response to those comments; or

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2. The regional planning unit shall prepare a joint document providing a summary and response to all comments received by each local government in the regional planning area.

F. The regional planning unit shall give due consideration to public comments and may revise the draft regional water supply plan. The revised regional water supply plan need not be publicly noticed.

9VAC25-780-60. State role in ~~program~~ regional water supply plan preparation.

To assist local governments in the development of ~~local programs~~ regional water supply plans, the ~~board~~ department will:

1. Provide ~~technical and financial assistance~~ planning, policy, and technical assistance to each regional planning area differentiated according to each area's water supply challenges, existing resources, and other factors;

2. Provide financial assistance from any planning funds and prioritize the allocation of planning funds and other available funds to local governments that sufficiently participate in regional planning;

3. Provide guidance on compliance options;

~~3.~~ 4. Facilitate acquisition of existing water resource conditions (the department shall prepare and post on its website a list of readily available sources for the items identified in 9VAC25-780-90 B);

4. 5. Facilitate acquisition of existing use information that has been reported to the department;

~~5.~~ 6. Facilitate acquisition of water management information (the department shall prepare and post on its website a list of acceptable practices that are used with regard to the topics in 9VAC25-780-110);

6. 7. Identify acceptable methods for the projection of future water demands as per 9VAC25-780-100;

7. 8. Provide any information regarding known beneficial use conflicts relating to the development of alternatives as identified in the most recent State Water Resources and Supply Plan;

8. 9. Convene kickoff meetings for the regional planning units;

10. Follow up with localities that have been identified as not participating in the regional planning unit and the development of the regional water supply plan;

11. Ensure that local governments coordinate sufficiently in the development of regional plans;

12. Ensure that each regional plan clearly identifies the region's water supply risks and proposes strategies to address those risks;

13. At the request of the applicant, convene a technical evaluation committee meeting; and

9. 14. Provide notice on the department website of local public hearings informational meetings on the local program regional water supply plan upon notification by the locality.

9VAC25-780-70. Existing water source information.

A. Each local government within the regional planning area shall provide existing water source information to assist in the development of the regional water supply plan. A regional water supply plan shall include current information on existing water sources within the regional planning area.

B. Each local government within the regional planning area shall provide existing water source information for community water systems using groundwater to assist in the development of the regional water supply plan. A regional water supply plan shall include, for community water systems using ground water, groundwater: (i) the name and identification number of the well or wells, (ii) the well depth, (iii) the casing depth, (iv) the screen depth (top and bottom) or water zones, (v) the well diameter, (vi) the design capacity for the designed average daily withdrawal and maximum daily withdrawal, (vii) the system capacity permitted by the Virginia Department of Health, and (viii) the annual and monthly permitted amounts contained in ground water withdrawal permits for all wells located within ground water management areas.

C. Each local government within the regional planning area shall provide existing water source information for community water systems using surface water reservoirs to assist in the development of the regional water supply plan. A regional water supply plan shall include, for community water systems using surface water reservoirs: (i) the name of the reservoirs, (ii) the sub-basins in which the reservoirs are located, (iii) the drainage area, (iv) the amount of on-stream storage available for water supply, (v) the design capacity for designed average daily and maximum daily withdrawals from the reservoirs, (vi) the safe yield of the reservoirs, (vii) the capacity of any associated water treatment plant, (viii) the Virginia Department of Health permitted capacity of the systems, and (ix) any limitations on withdrawal established by permits issued by the department. For a community water system that operates a system of interconnected reservoirs, the reporting of the design capacity for withdrawals, designed average daily withdrawal, the designed maximum daily withdrawal and the safe yield information may be presented for the entire system or may be reported as subsets of the system, except that the plan must report the drainage area and amount of storage available for water supply from each reservoir independently. The plan shall designate which reservoirs and which intakes constitute a system for the purposes of this paragraph subsection. The plan must report the drainage area and amount of storage available for water supply from each reservoir independently.

D. Each local government within the regional planning area shall provide existing water source information for community water systems using stream intakes to assist in the development of the regional water supply plan. A regional water supply plan shall include, for community water systems using stream intakes: (i) the name of the stream or river, (ii) the drainage area of the intake, (iii) the sub-basin in which the intake is located, (iv) the design capacity for designed average daily and designed maximum daily withdrawal from the stream, (v) the safe yield, (vi) the lowest daily flow of record, (vii) the design capacity of the pump station, (viii) the design capacity of the water treatment plant, (ix) the capacity of the system permitted by the Virginia Department of Health, and (x) any limitation on withdrawals established by permits issued by the department.

E. To the extent that information is available, to assist the development of the regional water supply plan, each local government shall review the data provided by the department for self-supplied users of more than 300,000 gallons of surface water in any one month. Local governments shall review this information and provide information for any locally known withdrawals of more than 300,000 gallons in any one month not identified in the dataset provided. A regional water supply plan shall include a list of for all self-supplied users of more than 300,000 gallons per in any month of surface water for nonagricultural uses: (i) the name of the water body utilized, (ii) the design capacity for the designed average daily and maximum daily withdrawal, and (iii) any limitation on withdrawals established by permits issued by the department, the Virginia Department of Health, or any other agency.

F. To the extent that information is available, to assist the development of the regional water supply plan, each local government shall review the data provided by the department for self-supplied users of more than 300,000 gallons of groundwater in any one month. Local governments shall review this information and provide information for any locally known withdrawals of more than 300,000 gallons in any one month not identified in the dataset provided. A regional water supply plan shall include, for all self-supplied users of more than 300,000 gallons per in any month of ground water groundwater for nonagricultural uses: (i) the name and identification number of the well or wells, (ii) the well depth, (iii) the casing depth, (iv) the screen depth (top and bottom) or water zones, (v) the well diameter, (vi) the design capacity for the designed average daily and maximum daily withdrawal and (vii) any limitation on withdrawal established by permits issued by the department, the Virginia Department of Health, or any other agency.

G. To assist the development of the regional water supply plan, each local government shall review the data provided by the department for community water systems with existing contractual agreements to receive raw or finished water deliveries from another party. Local governments shall review this information and provide information for any locally

known contractual agreements not identified in the dataset provided. A regional water supply plan shall include, for any community water systems with existing contractual agreements to receive raw or finished water deliveries from another party: (i) the source of the water to be provided under the contract, (ii) the amount of ground groundwater or surface water to be purchased contractually available to be delivered to the community water system from a water supply systems outside the geographic boundaries of the planning area system on a maximum daily and average annual basis, (iii) any contractual limitations on the purchase delivery of the water, including but not limited to the term of any contract or agreement, (iv) the recipient(s) recipients or areas served by the water purchased, and (v) the name(s) name of the supplier(s) any supplier.

H. A regional water supply plan, if practicable, shall include an estimate of the amount of water available to be purchased outside the planning area from any source with the capacity to withdraw more than 300,000 gallons per in any month of surface and ground water or groundwater, reported on a maximum daily and average annual basis and any contractual limitations on the purchase of the water including but not limited to the term of any contract or agreement, the geographic region(s) that receive the water purchased, and the name(s) of the supplier(s) and that is not addressed by subsection G of this section.

I. To assist the development of the regional water supply plan, each local government shall review the data provided by the department related to agricultural users who utilize more than 300,000 gallons in any month. Local governments shall review this information and provide information for any locally known agricultural users of more than 300,000 gallons in any month not identified in the dataset provided. A regional water supply plan shall include, to the extent possible, (i) a list of agricultural users who utilize more than 300,000 gallons per in any month, (ii) an estimate of total agricultural usage by source, (iii) whether the use is irrigation or nonirrigation, (iv) the maximum capacity of the intake or well, and (v) whether the source is surface or ground water or groundwater.

J. To assist the development of the regional water supply plan, each local government shall provide an estimate of the number of residences and businesses that are self-supplied by individual wells withdrawing less than 300,000 gallons in any month and an estimate of the population served by individual wells. A regional water supply plan shall include an estimate of the number of residences and businesses that are self-supplied by individual wells withdrawing less than 300,000 gallons per in any month and an estimate of the population served by individual wells.

K. When available, a water plan shall include a summary of findings and recommendations from applicable source water assessment plans or wellhead protection programs.

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9VAC25-780-80. Existing water use information.

A. Each local government within the regional planning area shall provide information documenting existing water use information to assist in the development of the regional water supply plan. A regional water supply plan shall include, at a minimum, current information documenting existing water use as listed below in this section for each local government within the regional planning area. Water use information shall be obtained from the Virginia Department of Health waterworks permit compliance reports, the department ground-water groundwater permit compliance reports or, department water use reports provided to each local government, or other appropriate available sources. Information shall be reported for the most recent previous annual compilation of such data that is available on the date of submission of the water plan. Each local government shall be responsible for reviewing the water use information for their locality and obtaining this information from any known omissions in the dataset.

B. A regional water supply plan shall include the following information for each community water systems system within the regional planning area:

1. The population within the planning area served by each community water system served.
2. The number of service connections within the planning area for each community water system.
3. The average and maximum daily withdrawal for each community water system within the planning area of groundwater or surface water over the most recent five-year period.
4. The amount of water used within the planning area on an annual average basis, and on an average monthly basis for each community water system expressed in terms of million gallons per day over the most recent five-year period.
5. The peak day water use by month for each community water system within the planning area.
6. An estimate of the water used on an average annual basis by self-supplied nonagricultural users of more than 300,000 gallons per in any month of surface water and ground-water groundwater within the service area of each the community water system.
7. An estimate of the amount of water used on an average annual basis by self-supplied agricultural users of more than 300,000 gallons per in any month of surface water and ground-water groundwater within the service area of each the community water supply system.
8. An estimate of the number of self-supplied users of less than 300,000 gallons per in any month of ground-water groundwater and an estimate of the total amount of water used by them on an annual average basis within the service area of each the community water supply system.

9. For each community water system included in the water plan, the plan shall include an An estimate of the disaggregated amounts of water used in categories of use appropriate for the system. Typical categories may include:

- a. Residential use;
- b. Commercial, institutional, and light industrial (CIL) use;
- c. Heavy industrial use;
- d. Military water use;
- e. Water used in water production processes;
- f. Unaccounted for losses;
- g. Sales to other community water systems and the names of such systems; or
- h. Subtotals of the above categories for all community water systems.

10. To the extent that information is available or sources of information are provided by the department pursuant to 9VAC25-780-60 and other sources, for each community water system included in the water plan using stream intakes, the plan shall include a qualitative description of existing in-stream beneficial uses within the planning area or outside the planning area that may be affected by the point of stream withdrawal.

C. A Using information provided by the department and any additional locally identified data, a regional water supply plan shall include an estimate of the water used on an average annual basis by self-supplied nonagricultural user users of more than 300,000 gallons per in any month of surface water and ground-water groundwater outside the service areas of community water systems.

D. A Using information provided by the department and any locally identified data, a regional water supply plan shall include an estimate of the amount of water used on an average annual basis by self-supplied agricultural users of more than 300,000 gallons per in any month of surface water and ground-water groundwater outside the service areas of community water systems.

E. A Using information provided by the department and any additionally identified data, a regional water supply plan shall include an estimate of the number of self-supplied users of less than 300,000 gallons per in any month of ground-water groundwater and an estimate of the total amount of water used by them on an annual average basis outside the service areas of community water systems.

9VAC25-780-90. Existing water resource information.

A. A program shall include a description of Each local government within the regional planning area shall provide information documenting existing geologic, hydrologic, and meteorological conditions to assist in the development of the regional water supply plan. A regional water supply plan shall

include a description of existing geologic, hydrologic, and meteorological conditions within the planning area, and in proximity to the point of withdrawal if it is outside the planning area.

B. A ~~program~~ regional water supply plan shall include a description of existing environmental conditions that pertain to, or may affect, in-stream flow, in-stream uses, and sources that provide the current supply. This description of conditions may be provided in a distinct section of the plan document or as a part of the existing water sources information required pursuant to 9VAC25-780-70. This information may be derived from existing, readily available sources of information and additional detailed, and information provided by the department. Additional studies shall not be required. The description of conditions shall include the following items, as they are applicable:

1. State or federal listed threatened or endangered species or habitats of concern;
2. Anadromous, trout, and other significant fisheries;
3. River segments that have recreational significance, including state scenic river status;
4. Sites of historic or archaeological significance;
5. Unusual geologic formations or special soil types;
6. Wetlands;
7. Riparian buffers and conservation easements;
8. Land use and land coverage, including items such as percentage of impervious cover within a watershed and areas where new development may impact water quality of the source;
9. The presence of impaired streams and the type of impairment;
10. The location of point source discharges; and
11. ~~Potential threats to the existing water quantity and quality, other than those from above~~ Water availability based on in-stream flow necessary to support aquatic life provided by the department as identified in the most recent version of the State Water Resources and Supply Plan.

9VAC25-780-100. Projected water demand information; statement of need and alternatives.

A. Each local government within the regional planning area shall provide projections of future water demand to assist in the development of the regional water supply plan. A regional water supply plan shall include projections of future water demand as listed below for each local government within the regional planning area in accordance with this section. Population in aggregate and disaggregate formulations should be estimated according to information from the U.S. Census Bureau, Bureau of Economic Analysis, the Virginia

Employment Commission, or other accepted source of population information, including but not limited to, local or regional sources. Demand projection methodologies should be consistent with those outlined in the American Water Works Association or American Society of Civil Engineers manuals by the department consistent with 9VAC25-780-60. Sources of information and methodologies used in projecting future water demand shall be documented.

B. A regional water supply plan shall estimate water demand within the planning area for a minimum of 30 to a maximum of 50 years into the future. While not required, localities are encouraged to plan for the maximum planning period to ensure that the most appropriate and sustainable alternatives are identified.

C. A regional water supply plan shall include an estimated future water use projected at the beginning of each decade (2010, 2020, 2030, etc.) within the planning period.

D. A regional water supply plan shall include the following projections for community water systems:

1. An estimate of population within the planning area served by each community water system;
2. A map depicting the proposed service area of each existing or proposed community water system;
3. Estimated water demand for each existing or proposed community water system on both an annual average and peak monthly basis;
4. Estimated water demand for each existing or proposed community water system disaggregated into categories of use appropriate for the system. Typical categories may include:
 - a. Residential use;
 - b. Commercial institutional and light industrial (CIL) use;
 - c. Heavy industrial use;
 - d. Military water use;
 - e. Water used in water production processes;
 - f. Unaccounted for losses;
 - g. Sales to other community water systems and the names of such systems; or
 - h. Subtotals of the above categories listed in this subsection for all community water systems; and or
 - i. Projected water demands with and without water conservation pursuant to 9VAC25-780-110 B; and
5. Total projected water demand for all existing or proposed community water systems disaggregated into the categories used in subdivision 4 of this subsection.

E. A regional water supply plan shall include a projection of water demand within the regional planning area on an annual average basis for each existing and any proposed self-supplied

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nonagricultural user of more than 300,000 gallons per in any month of surface water and ground water located outside the service areas of community water systems groundwater.

F. A regional water supply plan shall include a projection of the amount of water use on an annual average basis for each existing and any projected self-supplied agricultural user of more than 300,000 gallons per in any month of surface water and ground water located outside the service areas of community water systems groundwater.

G. A regional water supply plan shall include a projection of the number of self-supplied users of less than 300,000 gallons per in any month of ground water groundwater and a projection of the amount of water used on an annual average basis outside the service areas of community water systems.

H. Each local government within the regional planning area shall assist in the development of the regional water supply plan by determining the adequacy of existing water sources to meet current and projected demand by preparing a clear statement of need that is derived from an evaluation of the information required by 9VAC25-780-70 through 9VAC25-780-110. The statement of need shall contain, at a minimum, a determination of whether the existing sources are adequate to meet current and projected demands. If the determination is that existing sources are inadequate to meet current or projected demands during the planning period, each local government shall identify a reasonable range of potential alternative sources of supply to address the shortfall in demand. The list of alternatives shall include:

1. Potential water savings from water demand management actions, including an estimated volume for each action; and
2. Potential sources for new or alternative supplies, including an estimated volume from each source.

I. If any local government in the regional planning area determines that one or more existing sources within its jurisdiction is inadequate to meet projected demands during the planning period, or the regional strategies proposed in 9VAC25-780-125 include the development of new or alternative water sources, the regional water supply plan shall include an alternatives analysis with the following elements:

1. A statement of need that addresses the location, magnitude, and timing of the projected shortfall in demand within the regional planning area;
2. Identification of a reasonable range of alternatives that potentially may satisfy the stated need, including all alternatives identified by a local government under subsection G of this section, and, as appropriate, other (i) water savings from water demand management actions, including an estimated volume for each action; (ii) sources for new water supplies, such as wells, reservoirs, impoundments and stream intakes, or aquifers, and an estimated volume from each source; (iii) nontraditional

means of increasing supplies, such as interconnection, desalination, recycling, and reuse; and (iv) cross-jurisdictional regional approaches for shared development of new sources or expanding existing sources;

3. For each alternative to which it applies, a statement of any potential water availability issues identified by the board in the most recent review of the regional water supply plan or the State Water Resources and Supply Plan in accordance with 9VAC25-780-140 G, for each potential new source that any future water project will need to consider in its development; and

4. An assessment of whether the identified alternatives are (i) available; (ii) practicable in terms of cost, logistics, and existing technology; (iii) avoid and minimize the need for water to the extent practicable; and (iv) are sufficient to satisfy the need alone or in combination with other short-term or long-term alternatives.

J. A regional water supply plan shall include address, if available, any cumulative demand, use conflict, or in-stream flow information developed identified by the board in the most recent review of the regional water supply plan or most recent version of the State Water Resources and Supply Plan pursuant to 9VAC25-780-140 G.

K. A regional water supply plan shall explain how the projected needs of domestic consumption, in-stream uses, and economic development have been accounted for in the demand projection for the planning period.

9VAC25-780-110. Water demand management information.

A. Each local government within the regional planning area shall provide information documenting existing water demand management plans or practices to assist in the development of the regional water supply plan.

B. As part of a long-term strategy, a regional water supply plan shall address water conservation as a part of overall water demand management in accordance with the following requirements:

1. A regional water supply plan shall include information that describes practices describe strategies for more efficient use of water that are used within the regional planning area. The type of measures to be described may include, but are not limited to, the adoption and enforcement of the Virginia Uniform Statewide Building Code (13VAC5-63) sections that limit maximum flow of water closets, urinals, and appliances; use of low-water use landscaping; and increases in irrigation efficiency.

2. A regional water supply plan shall include information describing describe the water conservation measures used within the regional planning area to conserve water through the reduction of use. The types of measures to be described

may include, ~~but are not limited to~~, technical, educational, and financial programs.

3. A regional water supply plan shall ~~include information that describes~~ describe, within the regional planning area, the practices to address water loss in the maintenance of water systems to reduce unaccounted for water loss. The types of items to be described may include, ~~but are not limited to~~: leak detection and repair and old distribution line replacement.

~~B.~~ C. Current water conservation practices, techniques, and technologies shall be considered in projecting water demand pursuant to 9VAC25-780-100 D.

9VAC25-780-120. Drought response and contingency plans.

~~A program~~ A. Each local government with the regional planning area that ~~includes~~ contains within its geographic jurisdiction community water systems and self-supplied users who withdraw more than an average of 300,000 gallons per in any month of surface water and ~~ground water~~ groundwater shall ~~contain~~ develop a drought response and contingency plans ~~in accordance with~~ plan that contains the following requirements:

1. Drought response and contingency plans shall be ~~structured to~~ address the unique characteristics of the water source that is being utilized and the nature of the beneficial use of water. Direct stream intakes shall consider the lowest flow of record and reservoirs shall consider available usable storage to the extent practicable.

2. Drought response and contingency plans shall contain, at a minimum, the following three graduated stages of responses to the onset of drought conditions:

a. Each drought stage shall have specific triggers designed to address the particular vulnerabilities of each water source.

b. ~~Drought watch stage responses are generally~~ responses that are intended to increase awareness in the public and private sector to climatic conditions that are likely to precede the occurrence of a significant drought event. Public outreach activities shall be identified to inform the population served by a community water system of the potential for drought conditions to intensify and potential water conservation activities that may be utilized.

~~b.~~ c. Drought warning stage responses are ~~generally~~ responses that are required when the onset of a significant drought event is imminent. Voluntary water conservation activities shall be identified with the goal of reducing water use by 5-10%.

~~c.~~ d. Drought emergency stage responses are ~~generally~~ responses that are required during the height of a significant drought event. Mandatory water conservation

activities shall be identified with the goal of reducing water use by 10-15%.

3. Drought response and contingency plans shall include references to local ordinances, if adopted, and procedures for the implementation and enforcement of drought response and contingency plans.

B. If there is a conflict between subsection A of this section and any condition of a permit issued by the department, a drought response and contingency plan shall conform to the permit and, to the extent practicable and consistent with the permit, subsection A of this section.

C. Each regional planning area, to the extent practicable, shall evaluate the feasibility of developing a regional drought response and contingency plan as part of the regional water supply plan. If a regional drought contingency and response plan is developed, it shall include all of the elements identified in the subsection A of this section.

D. If a regional drought response and contingency plan is not feasible, the regional water supply plan shall include a summary description of any cross-jurisdictional coordination efforts on drought response.

9VAC25-780-125. Identification of water supply risks and proposed regional strategies.

A. A regional water supply plan shall identify water supply risks. For each water supply risk identified the likelihood and severity of the impact on water supply in the regional water supply plan shall be evaluated.

B. In evaluating potential water supply risks, the regional planning unit shall consider, at a minimum, the following:

1. The findings of any wellhead protection or source water protection plans developed for sources of supply in the regional planning area;

2. The potential effects of climate change or need for climate resiliency;

3. Reduction in availability to meet water supply demands during short-term droughts and long-term droughts due to current demands, increasing demands, new withdrawals, or other factors;

4. Reduction in availability of groundwater from coastal plain or fractured rock aquifers due to current or increasing demands or new withdrawals;

5. The water needs of other beneficial uses, including aquatic habitat and waste assimilative capacity;

6. Reductions in available supply due to a lack of assessment or failure to address excessive rates of unaccounted water;

7. Affordability of costs for developing new or maintaining existing sources, infrastructure improvements, and impacts to rates for water customers; and

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8. Other water supply risks as identified by the local governments.

C. The regional water supply plan shall identify and evaluate a reasonable range of potential regional strategies or projects to address each identified water supply risk. Each strategy or project shall include, at a minimum, the following information:

1. A description of the strategy or project and the local governments and stakeholders that would be involved if implemented; and
2. An analysis of how the strategy or project would mitigate the impact of risk. For strategies or projects intended to address risks associated with a reduction in available water supply, an estimate of how the strategy would impact available water supply shall also be included.

D. Regional strategies or projects may address more than one risk. Cross-jurisdictional strategies or projects shall be considered to the extent practicable. Strategies may include water conservation elements included in the water demand management information and drought response and contingency plans required by 9VAC25-780-110 and 9VAC25-780-120 respectively. Projects that include alternative water sources or the expansion of existing sources shall be included in the analysis of alternatives required by 9VAC25-780-100 I.

9VAC25-780-130. ~~Statement of need and alternatives.~~ (Repealed.)

A. ~~A water plan shall determine the adequacy of existing water sources to meet current and projected demand by preparing a clear statement of need that is derived from an evaluation of the information required by 9VAC25-780-70 through 9VAC25-780-110. The statement of need shall contain, at a minimum, a determination of whether the existing source(s) is adequate to meet current and projected demands.~~

B. ~~If the determination is that the existing source is inadequate to meet projected demands during the planning period, the program shall include an alternative analysis of potential sources that includes the following information:~~

1. A description of potential water savings from water demand management actions including an estimated volume for each action;
2. A description of potential sources for new supplies including an estimated volume from each source; and
3. A description of potential resource issues or impacts, identified in accordance with 9VAC25-780-140 G, known for each potential new source that any future water project will need to consider in its development.

C. ~~Potential alternatives considered shall include water demand management alternatives as well as more traditional means of increasing supply, i.e., wells, reservoirs, impoundments and stream intakes. Where appropriate, the~~

~~program shall consider nontraditional means of increasing supplies such as interconnection, desalination, recycling and reuse. The analysis of potential alternatives may include a combination of short term and long term alternatives. The result of this analysis shall be provided as part of the submission required by 9VAC25-780-50 C 7.~~

9VAC25-780-140. Review of ~~local programs~~ regional water supply plans.

A. The board shall review all programs regional water supply plans to determine compliance with this regulation chapter and consistency with the State Water Resources and Supply Plan. The board will review adopted elements of a local program regional water supply plan according to review policies adopted by the board. Copies of the adopted local program regional water supply plan documents and subsequent changes thereto shall be provided to the board department.

B. To assist in the review of the program regional water supply plans, the board shall provide the Virginia Department of Health and other agencies listed in 9VAC25-780-150 B along with any other agency the board deems appropriate, 90 days to evaluate the program regional water supply plans. Comments must be received from the Virginia Department of Health or other agency by the deadline stipulated in the written notification from the board.

C. The board will assess the compliance of submitted programs regional water supply plans with these regulations this chapter. The board shall prepare a tentative statement of findings on whether the program regional water supply plan has demonstrated compliance with the following:

1. All elements of a ~~local program~~ regional water supply plan identified in 9VAC25-780-50 have been submitted;
2. The program regional water supply plan was developed through a planning process consistent with this chapter;
3. The results of any evaluation conducted pursuant to subsection G of this section have been appropriately accommodated;
4. The existing sources information complies with 9VAC25-780-70;
5. The existing water use information complies with 9VAC25-780-80;
6. The existing resources information complies with 9VAC25-780-90;
7. The projected water demand is based on an accepted methodology and complies with 9VAC25-780-100;
8. The water demand management information complies with 9VAC25-780-110;
9. The drought response and contingency plan complies with 9VAC25-780-120;

10. The region's water supply risks have been identified and regional strategies to address those risks have been proposed and comply with 9VAC25-780-125;

10- 11. The statement of need complies with 9VAC25-780-130 A 9VAC25-780-100 H;

11- 12. When required, the alternatives comply analysis complies with 9VAC25-780-130 9VAC25-780-100;

13. The regional water supply plan demonstrates sufficient cross-jurisdictional coordination between local governments and consultation with stakeholders during regional water supply plan development in accordance with 9VAC25-780-50; and

12- 14. The local program regional water supply plan is consistent with 9VAC25-390-20, § 62.1-11 of the Code of Virginia, and Chapter 3.2 (§ 62.1-44.36 et seq.) of Title 62.1 of the Code of Virginia.

D. If the board's tentative decision is to find the local program regional water supply plan in compliance with subsection C of this section, the board shall provide public notice of its findings pursuant to 9VAC25-780-150.

E. If the tentative decision of the board is to find the local program regional water supply plan in noncompliance with subsection C of this section this chapter, the board shall identify (i) the reason for the finding of noncompliance, (ii) what is required for compliance, and (iii) and the right to an informational proceeding under Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of the Virginia Administrative Process Act.

F. The board shall make a final decision on whether the local program regional water supply plan is in compliance with this chapter after completing review of the submitted program regional water supply plan, any agency comments received, and any public comment received from a public meeting held pursuant to 9VAC25-780-160.

G. In conjunction with the compliance determination made by the board, the state will develop additional information and conduct additional evaluation of local or regional alternatives in order to facilitate continuous planning. This additional information shall be included in the State Water Resources and Supply Plan and used by made available to localities for use in their program planning. This information developed by the department shall include:

1. A cumulative demand analysis, based upon information contained in the State Water Resources Plan and other sources An estimate of current water withdrawals and use for agriculture, domestic use, and other significant categories of water users;

2. The evaluation of alternatives prepared pursuant to 9VAC25-780-130 B and C A projection of water withdrawals and use by agriculture, industry, domestic use, and other significant categories of water users;

3. The evaluation of potential use conflicts among projected water demand and estimates of requirements for in-stream flow; and An estimate, for each major river and stream, of the minimum in-stream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries;

4. An evaluation of the relationship between the local plan and the State Water Resources Plan, to the extent practicable, of the ability of existing subsurface and surface waters to meet current and future water uses, including minimum in-stream flows, during drought conditions;

5. An evaluation, in cooperation with the Virginia Department of Health and local water supply managers, of the current and future capability of public water systems to provide adequate quantity and quality of water;

6. An estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying timeframes, of the risk that each locality and region will experience water supply shortfalls; and

7. An evaluation, to the extent practicable, of hydrologic, environmental, economic, social, legal, and jurisdictional aspects identified.

H. The board department may facilitate information sharing and discussion among localities when potential conflicts arise with regard to demands upon a source.

I. A local program's regional water supply plan's information shall be included in the State Water Resource and Supply Plan when determined to be in compliance by the board.

9VAC25-780-150. Public notice and public comment period.

A. The board shall give public notice on the department website for every tentative and final decision to determine local program regional water supply plan compliance.

B. The board shall give public notice to the Virginia 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 Wildlife Resources for every tentative and final decision on program regional water supply plan compliance. The agencies shall have 90 days to submit written comment. At the request of the applicant, the board will convene a technical evaluation committee meeting to facilitate receipt of these comments.

C. The board shall provide a comment period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative or final decision. All written comments submitted during the comment period shall be retained by the board and considered during its final decision.

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D. Commenters may request a public meeting when submitting comments. In order for the board to grant a public meeting, there must be a substantial public interest and a factual basis upon which the commenter believes that the proposed program regional water supply plan might be contrary to the purposes stated in 9VAC25-780-20.

E. The contents of the public notice of a proposed program regional water supply plan compliance determination shall include:

1. Name(s) Names and address(es) addresses of the locality(ies) localities that submitted the local or regional water plan;
2. Brief synopsis of the proposed plan, including any identified future alternatives;
3. The name(s) names of the principal water supply sources;
4. A statement of the tentative determination to certify or deny consistency with the regulation;
5. A brief description of the final determination procedure;
6. The address, e-mail email address, and phone telephone number of a specific person at the state office from whom further information may be obtained; and
7. A brief description on how to submit comments and request a public meeting.

9VAC25-780-160. Public meetings.

A. Public notice of any public meeting held pursuant to 9VAC25-780-150 shall be circulated as follows:

1. Notice shall be published on the department website;
2. Notice shall be published once in a newspaper of general circulation in the each county, city, or town where the local or regional water supply plan is in effect; and
3. Notice of the public meeting shall be sent to all persons and government agencies that requested a public meeting or have commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A-4 through-3 subsection A of this section at least 30 days in advance of the public meeting.

C. The content of the public notice of any public meeting held pursuant to this section shall include at least the following:

1. Name and address of the localities who prepared the program regional water supply plan;
2. The regional planning area covered by the program regional water supply plan;
3. A brief reference to the public notice issued for the comment period, including the date of issuance unless the public notice includes the public meeting notice;

4. Information regarding the time and location for the public meeting;

5. The purpose of the public meeting;

6. A concise statement of the relevant water resources planning, water quality, or fish and wildlife resource issues raised by the persons requesting the public meeting;

7. Contact person and the address, e-mail email address, and phone telephone number of the department office at which the interested persons may obtain further information or request a copy of the draft statement of findings prepared pursuant to 9VAC25-780-140 D; and

8. A brief reference to the rules and procedures to be followed at the public meeting.

9VAC25-780-180. Enforcement.

A. Enforcement of this chapter will be in accordance with §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32 of the Code of Virginia.

B. A local government shall not be liable for the inability of the local government or its regional planning unit to comply with any requirement of this chapter caused by the failure or refusal of any other local government, community water system, or self-supplied user to comply with any provisions of this chapter.

VA.R. Doc. No. R21-6543; Filed April 28, 2023, 12:12 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters (amending 9VAC25-800-10 through 9VAC25-800-30, 9VAC25-800-60).**

Statutory Authority: § 62.1-44.15 of **the** Code of Virginia; § 402 of **the** federal Clean Water Act.

Effective Date: March 1, 2024.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2666, FAX (804) 698-4178, or email peter.sherman@deq.virginia.gov.

Summary:

The Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from **the** Application of Pesticides to Surface Waters contains effluent limitations, monitoring requirements, and special conditions for discharges of pesticides to surface waters. **The** amendments reissue this general permit to clarify permit conditions and increase consistency with other general permits, including (i) a substantive change for animal pest control, which is **the** addition of "cultural methods" as a method that must be evaluated when selecting pest management measures; and (ii) changes to effective dates, definitions, and website and physical addresses.

9VAC25-800-10. Definitions.

The words and terms used in this chapter shall have **the** same meanings as given in **the** State Water Control Law (§ 62.1-44.2 et seq. of **the** Code of Virginia) and **the** VPDES Permit Regulation (9VAC25-31), unless **the** context clearly indicates otherwise, except that for **the** purposes of this chapter:

"Action threshold" means **the** point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current or past environmental factors that are or have been demonstrated to be conducive to pest emergence or growth, as well as past or current pest presence. Action thresholds are those conditions that indicate both **the** need for control actions and **the** proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by **the** federal Environmental Protection Agency (EPA) that will prevent, destroy, repel, or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within **the** meaning of § 2(a) of **the** Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in **the** produce thereof, and **the** genetic material necessary for **the** production of such a pesticidal substance (40 CFR 174.3).

"Adverse incident" means an unusual or unexpected incident that **the** operator observes upon inspection or of which otherwise becomes aware, in which there is evidence that:

1. A person or nontarget organism has likely been exposed to a pesticide residue; and

2. **The** person or nontarget organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within surface waters on nontarget plants, fish, or wildlife that are unusual or unexpected (e.g., effects are to organisms not described on **the** pesticide product labels or not expected to be present) as a result of exposure to a pesticide residue and may include:

1. Distressed or dead juvenile and small fishes;
2. Washed up or floating fish;
3. Fish swimming abnormally or erratically;
4. Fish lying lethargically at water surface or in shallow water;
5. Fish that are listless or nonresponsive to disturbance;
6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants; and
7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals (e.g., vomiting, lethargy) that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to surface waters that are temporally and spatially related to exposure to a pesticide residue.

"Biological control" means organisms that can be introduced to sites, such as herbivores, predators, parasites, and hyperparasites.

"Biological pesticides" or "biopesticides" includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants (PIP).

1. "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:

- a. Is a eukaryotic microorganism, including protozoa, algae, and fungi;
- b. Is a prokaryotic microorganism, including Eubacteria and Archaeobacteria; or
- c. Is a parasitically replicating microscopic element, including viruses.

2. "Biochemical pesticide" means a pesticide that:

- a. Is a naturally occurring substance or structurally similar and functionally identical to a naturally occurring substance;

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b. Has a history of exposure to humans and **the** environment demonstrating minimal toxicity, or in **the** case of a synthetically derived biochemical pesticide, is equivalent to a naturally occurring substance that has such a history; and

c. Has a nontoxic mode of action to **the** target pests.

3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in **the** produce thereof, and **the** genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in **the** plant or produce thereof.

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

"Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.

"Cultural methods" means manipulation of **the** habitat to increase pest mortality by making **the** habitat less suitable to **the** pest.

"Declared pest emergency situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than 10 days after identification of **the** need for pest control. This public declaration may be based on:

1. Significant risk to human health;
2. Significant economic loss; or
3. Significant risk to:
 - a. Endangered species;
 - b. Threatened species;
 - c. Beneficial organisms; or
 - d. **The** environment.

"DEQ" or "department" means **the** Virginia Department of Environmental Quality.

"Discharge of a pollutant" means **the** addition of any "pollutant" or combination of pollutants to surface waters from any point source, or **the** addition of any pollutant or combination of pollutants to **the** water of **the** contiguous zone or **the** ocean from any point source.

"FIFRA" means **the** Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) as amended.

"Impaired water" or "water quality impaired water" or "water quality limited segment" means any stream segment where **the** water quality does not or will not meet applicable water quality standards, even after **the** application of technology-based effluent limitations required by §§ 301(b) and 306 of **the** Clean

Water Act (CWA) (33 USC § 1251 et seq. as of 1987). Impaired waters include both impaired waters with approved or established TMDLs, and impaired waters for which a TMDL has not yet been approved or established.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by EPA), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than **the** active ingredient, where **the** substance is used to confirm or ensure **the** presence of **the** active ingredient, and includes **the** genetic material necessary for **the** production of **the** substance, provided that genetic material is intentionally introduced into a living plant in addition to **the** active ingredient.

"Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on **the** life cycles of pests and their interaction with **the** environment. This information, in combination with available pest control methods, is used to manage pest damage by **the** most economical means, and with **the** least possible hazard to people, property, and **the** environment.

"Label" means **the** written, printed, or graphic matter on, or attached to, **the** pesticide or device, or **the** immediate container thereof, and **the** outside container or wrapper of **the** retail package, if any, of **the** pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter:

1. Upon **the** pesticide or device or any of its containers or wrappers;
2. Accompanying **the** pesticide or device at any time; or
3. To which reference is made on **the** label or in literature accompanying **the** pesticide or device, except when accurate, nonmisleading reference is made to current official publications of **the** agricultural experiment station, **the** Virginia Polytechnic Institute and State University, **the** Virginia Department of Agriculture and Consumer Services, **the** State Board of Health, or similar federal institutions or other official agencies of **the** Commonwealth or other states when such states are authorized by law to conduct research in **the** field of pesticides.

"Mechanical or physical methods" means mechanical tools or physical alterations of **the** environment for pest prevention or removal.

"Minimize" means to reduce or eliminate pesticide discharges to surface waters through **the** use of pest management measures to **the** extent technologically available and economically practicable and achievable.

"Nontarget organisms" means **the** plant and animal hosts of **the** target species, **the** natural enemies of **the** target species living in **the** community, and other plants and animals, including vertebrates, living in or near **the** community that are not **the** target of **the** pesticide.

"Operator" means any person involved in **the** application of a pesticide that results in a discharge to surface waters that meets either or both of **the** following two criteria:

1. **The** person who has control over **the** financing for or **the** decision to perform pesticide applications that result in discharges, including **the** ability to modify those decisions; or
2. **The** person who performs **the** application of a pesticide or who has day-to-day control of **the** application (e.g., they are authorized to direct workers to carry out those activities that result in discharges to surface waters).

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

"Pest" means any deleterious organism that is:

1. Any vertebrate animal other than man;
2. Any invertebrate animal excluding any internal parasite of living man or other living animals;
3. Any plant growing where not wanted, and any plant part such as a root; or
4. Any bacterium, virus, or other microorganisms, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined by **the** federal Food, Drug, and Cosmetic Act at 21 USC § 321(g)(1)), and cosmetics (as defined by **the** federal Food, Drug, and Cosmetic Act at 21 USC § 321(i)).

Any organism classified by state or federal law or regulation as endangered or threatened shall not be deemed a pest for **the** purposes of this chapter.

"Pest management area" means **the** area of land, including any water, for which pest management activities covered by this permit are conducted.

"Pest management measure" means any practice used to meet **the** effluent limitations that comply with manufacturer specifications, industry standards, and recommended industry practices related to **the** application of pesticides, relevant legal requirements, and other provisions that a prudent operator would implement to reduce or eliminate pesticide discharges to surface waters.

"Pesticide" means:

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects,

rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which **the** Commissioner of Agriculture and Consumer Services shall declare to be a pest;

2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

3. Any substance which is intended to become an active ingredient thereof.

Pesticides that are used or applied shall only be those that are approved and registered for use by **the** Virginia Department of Agriculture and Consumer Services.

"Pesticide discharges to surface waters from pesticide application" means **the** discharges that result from **the** application of biological pesticides and **the** application of chemical pesticides that leave a residue from point sources to surface waters. In **the** context of this definition of pesticide discharges to surface waters from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 USC § 1342(l) and 33 USC § 1362(14)).

"Pesticide product" means a pesticide in **the** particular form (including active and inert ingredients, packaging, and labeling) in which **the** pesticide is, or is intended to be, distributed or sold. **The** term includes any physical apparatus used to deliver or apply **the** pesticide if distributed or sold with **the** pesticide.

"Pesticide research and development" means activities undertaken on a systematic basis to gain new knowledge (research) or apply research findings or other scientific knowledge for **the** creation of new or significantly improved products or processes (experimental development).

"Pesticide residue" for **the** purposes of determining whether [~~an~~ a] VPDES permit is needed for discharges to surface waters from pesticide application, means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of **the** pesticide.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, or container from which pollutants are or may be discharged. This includes biological pesticides or chemical pesticides that leave a residue coming from a container or nozzle of a pesticide application device. This term does not include return flows from irrigated agriculture or agricultural stormwater run-off.

"Pollutant" means biological pesticides and any pesticide residue resulting from use of a chemical pesticide.

"Surface waters" means:

1. All waters that are currently used, were used in **the** past, or may be susceptible to use in interstate or foreign

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commerce, including all waters that are subject to the ebb and flow of the tide;

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

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

"Target pest" means the organism toward which pest management measures are being directed.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Treatment area" means the area of land including any waters, or the linear distance along water or water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.

Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied.

For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Treatment area calculations for pesticide applications that occur at water's edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied.

"VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.

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

9VAC25-800-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published as of the July 1, ~~2018~~ 2022, CFR update.

9VAC25-800-20. Purpose; effective date of permit.

A. This general permit regulation governs discharges resulting from the application of pesticides to surface waters.

B. This VPDES general permit will become effective on March 1, ~~2019~~ 2024, and expire on February ~~29, 2024~~ 28, 2029.

9VAC25-800-30. Authorization to discharge.

A. Any operator that meets the eligibility requirements in subsection B of this section is hereby authorized for [~~his~~ the operator's] discharges resulting from the application of pesticides to surface waters of the Commonwealth of Virginia.

The definition of operator in 9VAC25-800-10 provides that more than one person may be responsible for the same discharge resulting from pesticide application. Any operator authorized to discharge under this general permit is responsible for compliance with the terms of this permit for discharges resulting from the application of pesticides.

B. Eligibility. This permit is available to operators who discharge to surface waters from **the** application of (i) biological pesticides, or (ii) chemical pesticides that leave a residue (pesticides), when **the** pesticide application is for one of **the** following pesticide use patterns:

1. Mosquito and other flying insect pest control - to control public health, nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water.
2. Weed and algae pest control - to control weeds, algae, and pathogens that are pests in surface waters.
3. Animal pest control - to control animal pests in surface waters.
4. Forest canopy pest control - application of a pesticide to **the** forest canopy to control **the** population of a pest species (e.g., insect or pathogen) where to target **the** pests effectively, a portion of **the** pesticide unavoidably will be applied over and deposited to surface water.
5. Intrusive vegetation pest control - to control vegetation along roads, ditches, canals, waterways, and utility rights of way where to target **the** intrusive pests effectively, a portion of **the** pesticide unavoidably will be applied over and deposited to surface water.

C. Operators applying pesticides are required to maintain a pesticide discharge management plan (PDMP) if they exceed **the** annual calendar year treatment area thresholds in Table 1 of this subsection:

Pesticide Use	Annual Threshold
Mosquito and Other Flying Insect Pest Control	6400 acres of treatment area ¹
Weed and Algae Pest Control	80 acres of treatment area ¹ or 20 linear miles of treatment area ²
Animal Pest Control	80 acres of treatment area ¹ or 20 linear miles of treatment area ²
Forest Canopy Pest Control	6400 acres of treatment area ¹
Intrusive Vegetation Pest Control	6400 acres of treatment area ¹ or 20 linear miles of treatment area ²
¹ Calculations include the area of the applications made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate	

activity. For example, applying pesticides twice a year to a 10-acre site is counted as 20 acres of treatment area.

²Calculations include **the** extent of **the** application made to linear features (e.g., roads, ditches, canals, waterways, and utility rights of way) or along **the** water's edge adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at **the** time of pesticide application. For calculating annual treatment totals, count each pesticide application activity or area as a separate activity. For example, applying pesticides twice a year to a one mile linear feature (e.g., ditch) equals two miles of treatment area regardless of whether one or both sides of **the** ditch are treated. Applying pesticides twice a year along one mile of lake shoreline equals two miles of treatment area.

D. An operator's discharge resulting from **the** application of pesticides is not authorized under this permit in **the** event of any of **the** following:

1. **The** operator is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of **the** VPDES Permit Regulation.
2. **The** discharge would violate **the** antidegradation policy stated in 9VAC25-260-30 of **the** Virginia Water Quality Standards. Discharges resulting from **the** application of pesticides are temporary and allowable in exceptional waters (see 9VAC25-260-30 A 3 (b) (3)).
3. **The** operator is proposing a discharge from a pesticide application to surface waters that have been identified as impaired by that pesticide or its degradates. Impaired waters include both impaired waters with board-adopted, EPA-approved or EPA-imposed TMDLs, and impaired waters for which a TMDL has not yet been approved, established, or imposed.

If **the** proposed discharge would not be eligible for coverage under this permit because **the** surface water is listed as impaired for that specific pesticide, but **the** applicant has evidence that shows **the** water is no longer impaired, **the** applicant may submit this information to **the** board department and request that coverage be allowed under this permit.

E. Discharge authorization date. Operators are not required to submit a registration statement and are authorized to discharge under this permit immediately upon **the** permit's effective date of March 1, 2019.

F. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 403, and 405(a) [through and] (b) of **the** federal Clean Water Act (33 USC § 1251 et seq.) and **the** State Water Control Law with **the** exceptions stated in 9VAC25-31-60 of **the** VPDES Permit Regulation. Approval for coverage under this VPDES general permit does not relieve any operator of **the** responsibility to comply with any other applicable federal,

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state, or local statute, ordinance, or regulation. For example, this permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. It also does not negate the requirement to fully comply with applicable state wetland program requirements administered by DEQ and the Virginia Marine Resources Commission.

G. Continuation of permit coverage.

1. ~~This general permit~~ Permit coverage shall expire ~~on February 29, 2024, at the end of the applicable permit term,~~ except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.

2. General permit coverages continued under this section remain fully effective and enforceable.

3. When the operator that was covered under the expiring or expired pesticides general permit is not in compliance with the conditions of that permit, the ~~board~~ department may choose to do any or all of the following:

- a. Initiate enforcement action based upon the pesticides general permit that has been continued;
- b. Issue a notice of intent to deny coverage under a reissued pesticides general permit. If the general permit coverage is denied, the operator would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-800-60. General permit.

Any operator who is authorized to discharge shall comply with the requirements contained in this general permit and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG87

Effective Date: March 1, ~~2019~~ 2024

Expiration Date: February ~~29, 2024~~ 28, 2029

GENERAL PERMIT FOR DISCHARGES RESULTING
FROM THE APPLICATION OF PESTICIDES TO
SURFACE WATERS OF VIRGINIA

AUTHORIZATION TO DISCHARGE UNDER THE
VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM AND THE VIRGINIA STATE WATER
CONTROL LAW

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State

Water Control Law and regulations adopted pursuant thereto, operators that apply pesticides that result in a discharge to surface waters are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth in this general permit. Coverage under this VPDES general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation, including the pesticide product label.

[Part I Effluent Limitations, Monitoring Requirements, and Special Conditions]

A. Effluent limitations.

1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the operator shall implement pest management measures that minimize discharges of pesticides to surface waters.

a. Minimize pesticide discharges to surface waters from pesticide application. All operators who perform the application of pesticides or who have day-to-day control of applications shall minimize the discharge of pollutants resulting from the application of pesticides, and:

(1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;

(2) No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leak proof. All spray distribution systems shall be leak proof, and any pumps that these systems may have shall be capable of operating at sufficient pressure to [~~assure~~ ensure] a uniform and adequate rate of pesticide application;

(3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over nontarget areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill pesticide

application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing a back siphon or backflow exists; and

(4) Assess weather conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to ensure application is consistent with product label requirements.

b. Integrated pest management (IPM) practices. The operator with control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions, shall to the extent practicable consider integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized. Operators that exceed the annual treatment area thresholds established in 9VAC25-800-30 C are also required to maintain a pesticide discharge management plan (PDMP) in accordance with Part I C of this permit. The PDMP documents the operator's IPM practices.

The operator's IPM practices shall consider the following for each pesticide use pattern:

(Note: If the operator's discharge of pollutants results from the application of a pesticide that is being used solely for the purpose of "pesticide research and development," as defined in 9VAC25-800-10, the operator is only required to fully implement IPM practices to the extent that the requirements do not compromise the research design.)

(1) Mosquito and other flying insect pest control. This [~~subpart~~ Part I A 1 b (1)] applies to discharges resulting from the application of pesticides to control public health, nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

- (i) Identify target pests;
- (ii) Establish densities for pest populations or identify environmental conditions, either current or based on historical data, to serve as action thresholds for implementing pest management measures;
- (iii) Identify known breeding sites for source reduction, larval control program, and habitat management;
- (iv) Analyze existing surveillance data to identify new or unidentified sources of pest problems as well as sites that have recurring pest problems; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in Part I A 1 b (1) (a).

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control mosquitoes or other flying insect pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;
- (iv) Cultural methods;
- (v) Biological control; and
- (vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage mosquitoes or flying insect pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

- (i) Conduct larval or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent areas prior to each pesticide application to assess the pest management area and to determine when the action threshold is met;
- (ii) Reduce the impact on the environment and on nontarget organisms by applying the pesticide only when the action threshold has been met;
- (iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when larval action thresholds have been met; and
- (iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when adult action thresholds have been met.

(2) Weed and algae pest control. This [~~subpart~~ Part I A 1 b (2)] applies to discharges resulting from the application of pesticides to control weeds, algae, and pathogens that are pests in surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide

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application for that calendar year, **the** operator shall consider **the** following for each pest management area:

- (i) Identify target pests;
- (ii) Identify areas with pest problems and characterize **the** extent of **the** problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);
- (iii) Identify possible factors causing or contributing to **the** pest problem (e.g., nutrients, invasive species, etc.);
- (iv) Establish past or present pest densities to serve as action thresholds for implementing pest management strategies; and
- (v) In **the** event there are no data for **the** pest management area in **the** past calendar year, use other available data as appropriate to meet **the** conditions in Part I A 1 b (2) (a).

(b) Pest management options. Prior to **the** first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to **the** first pesticide application for that calendar year, **the** operator shall select and implement, for each pest management area, efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control pests. In developing these pest management measures, **the** operator shall evaluate **the** following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;
- (iv) Cultural methods;
- (v) Biological control; and
- (vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage pests and application of **the** pesticide will result in a discharge to surface waters, **the** operator shall:

- (i) Conduct surveillance in an area that is representative of **the** pest problem prior to each pesticide application to assess **the** pest management area and to determine when **the** action threshold is met that necessitates **the** need for pest management; and
- (ii) Reduce **the** impact on **the** environment and nontarget organisms by applying **the** pesticide only when **the** action threshold has been met.

(3) Animal pest control. This [~~subpart~~ Part I A 1 b (3)] applies to discharges resulting from **the** application of pesticides to control animal pests in surface waters.

(a) Identify **the** problem. Prior to **the** first pesticide application covered under this permit that will result in a

discharge to surface waters, and at least once each calendar year thereafter prior to **the** first pesticide application for that calendar year, **the** operator shall consider **the** following for each pest management area:

- (i) Identify target pests;
- (ii) Identify areas with pest problems and characterize **the** extent of **the** problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);
- (iii) Identify possible factors causing or contributing to **the** problem (e.g., nutrients and invasive species);
- (iv) Establish past or present pest densities to serve as action thresholds for implementing pest management strategies; and

(v) In **the** event there are no data for **the** pest management area in **the** past calendar year, use other available data as appropriate to meet **the** conditions in Part I A 1 b (3) (a).

(b) Pest management options. Prior to **the** first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each year thereafter prior to **the** first pesticide application during that calendar year, **the** operator shall select and implement, for each pest management area, efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control animal pests. In developing these pest management measures, **the** operator shall evaluate **the** following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;
- (iv) Cultural methods;
- (v) Biological control; and

↔ (vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage animal pests and application of **the** pesticide will result in a discharge to surface waters, **the** operator shall:

- (i) Conduct surveillance prior to each application to assess **the** pest management area and to determine when **the** action threshold is met that necessitates **the** need for pest management; and
- (ii) Reduce **the** impact on **the** environment and nontarget organisms by evaluating site restrictions, application timing, and application method in addition to applying **the** pesticide only when **the** action threshold has been met.

(4) Forest canopy pest control. This [~~subpart~~ Part I A 1 b (4)] applies to discharges resulting from **the** application of pesticides to **the** forest canopy to control **the** population of a pest species where, to target **the** pests effectively, a

portion of **the** pesticide unavoidably will be applied over and deposited to surface waters.

(a) Identify **the** problem. Prior to **the** first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to **the** first pesticide application in that calendar year, **the** operator shall consider **the** following for each pest management area:

- (i) Identify target pests;
- (ii) Establish target pest densities to serve as action thresholds for implementing pest management measures;
- (iii) Identify current distribution of **the** target pest and assess potential distribution in **the** absence of pest management measures; and

(iv) In **the** event there are no data for **the** pest management area in **the** past calendar year, use other available data as appropriate to meet **the** conditions in Part I A 1 [~~(b)~~ **b**] (4) (a).

(b) Pest management options. Prior to **the** first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to **the** first pesticide application for that calendar year, **the** operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control forestry pests. In developing these pest management measures, **the** operator shall evaluate **the** following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;
- (iv) Cultural methods;
- (v) Biological control; and
- (vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage forestry pests and application of **the** pesticide will result in a discharge to surface waters, **the** operator shall:

- (i) Conduct surveillance prior to each application to assess **the** pest management area and to determine when **the** pest action threshold is met that necessitates **the** need for pest management;
- (ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in **the** treatment area to identify conditions that support target pest development and are conducive for treatment activities;
- (iii) Reduce **the** impact on **the** environment and nontarget organisms by evaluating **the** restrictions, application

timing, and application methods in addition to applying **the** pesticide only when **the** action thresholds have been met; and

(iv) Evaluate using pesticides against **the** most susceptible developmental stage.

(5) Intrusive vegetation pest control. This [~~subpart~~ **Part I A 1 b (5)**] applies to discharges resulting from **the** application of pesticides along roads, ditches, canals, waterways, and utility rights of way where, to target **the** intrusive pests effectively, a portion of **the** pesticide will unavoidably be applied over and deposited to surface waters.

(a) Identify **the** problem. Prior to **the** first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to **the** first pesticide application in that calendar year, **the** operator shall consider **the** following for each pest management area:

- (i) Identify target pests;
- (ii) Establish target pest densities to serve as action thresholds for implementing pest management measures;
- (iii) Identify current distribution of **the** target pest and assess potential distribution in **the** absence of pest management measures; and

(iv) In **the** event there are no data for **the** pest management area in **the** past calendar year, use other available data as appropriate to meet **the** conditions in Part I A 1 [~~(b)~~ **b**] (5) (a).

(b) Pest management options. Prior to **the** first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to **the** first pesticide application for that calendar year, **the** operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to intrusive vegetation pests. In developing these pest management measures, **the** operator shall evaluate **the** following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;
- (iv) Cultural methods;
- (v) Biological control; and
- (vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage intrusive vegetation pests and application of **the** pesticide will result in a discharge to surface waters, **the** operator shall:

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(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;

(iii) Reduce the impact on the environment and nontarget organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and

(iv) Evaluate using pesticides against the most susceptible developmental stage.

2. Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards for any discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time the operator become aware, or the board department determines, that the operator's discharge of pollutants causes or contributes to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.

B. Monitoring requirements.

All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable adverse incidents caused by application of pesticides, including the unanticipated death or distress of nontarget organisms and disruption of wildlife habitat, recreational, or municipal water use.

A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:

1. During any post-application surveillance or efficacy check that the operator conducts, if surveillance or an efficacy check is conducted.
2. During any pesticide application, when considerations for safety and feasibility allow.

C. Pesticide discharge management plan (PDMP). Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under

this general permit, even if discharges subsequently fall below the annual application threshold levels. The operator applying pesticides shall develop a PDMP consistent with the deadline outlined in Table I-1 [below].

Table I-1. Pesticide Discharge Management Plan Deadline	
Category	PDMP Deadline
Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to first pesticide application covered under this permit.
Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to exceeding an annual treatment area threshold.
Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.	No later than 90 days after responding to declared pest emergency situation.

The PDMP does not contain effluent limitations; the limitations are contained in [Parts Part] I A 1 and [I] A 2 of the permit. The PDMP documents how the operator will implement the effluent limitations in [Parts Part] I A 1 and [I] A 2 of the permit, including the evaluation and selection of pest management measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as a pre-existing integrated pest management (IPM) plan, a copy of the portions of any documents that are being used to document the implementation of the effluent limitations shall be attached to the PDMP. The pest management measures implemented must be documented and the documentation must be kept up to date.

1. Contents of the pesticide discharge management plan. The PDMP must include the following elements:

- a. Pesticide discharge management team;
- b. Problem identification;
- c. Pest management options evaluation;
- d. Response procedures:
 - (1) Spill response procedures;
 - (2) Adverse incident response procedures; and

- e. Signature requirements.
2. PDMP team. The operator shall identify all the persons (by name and contact information) who compose the team as well as each person's individual responsibilities, including:
 - a. Persons responsible for managing pests in relation to the pest management area;
 - b. Persons responsible for developing and revising the PDMP; and
 - c. Persons responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.
3. Problem identification. The operator shall document the following:
 - a. Pest problem description. Describe the pest problem at the pest management area, including identification of the target pests, sources of the pest problem, and sources of data used to identify the problem in Part I A 1 b (1) through b (5).
 - b. Action thresholds. Describe the action thresholds for the pest management area, including how they were determined.
 - c. General location map. Include a general location map that identifies the geographic boundaries of the area to which the plan applies and location of major surface waters.
4. Integrated pest management options evaluation. Operators shall document the evaluation of the pest management options, including a combination of the pest management options, to control the target pests. Pest management options include the following: no action, prevention, mechanical or physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, decision makers shall consider the impact to water quality, impact to nontarget organisms, feasibility, cost effectiveness, and any relevant previous pest management measures.
5. Response procedures. Document the following procedures in the PDMP:
 - a. Spill response procedures. At a minimum the PDMP must have:
 - (1) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to surface waters. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.
 - (2) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.
 - b. Adverse incident response procedures. At a minimum the PDMP must have:
 - (1) Procedures for responding to any incident resulting from pesticide applications; and
 - (2) Procedures for notification of the incident, both internal to the operator's agency or organization and external. Contact information for DEQ, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.
6. PDMP signature requirements.
 - a. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in Part II G 1 or by a duly authorized representative of that person described in Part II G 2.
 - b. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.
 - c. Any person signing documents in accordance with Part I C 6 a must include the certification from Part II G 4.
7. PDMP modifications and availability.
 - a. PDMP modifications. The operator shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part I D 1 a, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Part II G.
 - The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.
 - b. PDMP availability. The operator shall retain a copy of the current PDMP, along with all supporting maps and documents. The operator shall make the PDMP and supporting information available to the department upon request. The PDMP is subject to the provisions and exclusions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).
- D. Special conditions.
 1. Corrective action.
 - a. Situations requiring revision of pest management measures. If any of the following situations occur, the operator shall review and, as necessary, revise the evaluation and selection of pest management measures to

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ensure that **the** situation is eliminated and will not be repeated in **the** future:

(1) An unauthorized release or discharge associated with **the** application of pesticides occurs (e.g., spill, leak, or discharge not authorized by this or another VPDES permit);

(2) **The** operator becomes aware, or **the** ~~board~~ department concludes, that **the** pest management measures are not adequate or sufficient for **the** discharge of pollutants to meet applicable water quality standards;

(3) Any monitoring activities indicate that **the** operator failed to meet **the** technology-based effluent limitations in Part I A 1 a of this permit;

(4) An inspection or evaluation of **the** operator's activities by DEQ, VDACS, EPA, or a locality reveals that modifications to **the** pest management measures are necessary to meet **the** non-numeric effluent limits in this permit; or

(5) **The** operator observes (e.g., during visual monitoring that is required in Part I B) or is otherwise made aware of an adverse incident.

b. Corrective action deadlines. If **the** operator determines that changes to **the** pest management measures are necessary to eliminate any situation identified in Part I D 1 a, such changes must be made before **the** next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

2. Adverse incident documentation and reporting.

a. Twenty-four-hour adverse incident notification. If **the** operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from **the** operator's pesticide application, **the** operator shall immediately notify **the** department (see Part I D 5). This notification must be made within 24 hours of when **the** operator becomes aware of **the** adverse incident and must include at least **the** following information:

(1) **The** caller's name and telephone number;

(2) Operator's name and mailing address;

(3) **The** name and telephone number of a contact person if different than **the** person providing **the** 24-hour notice;

(4) How and when **the** operator became aware of **the** adverse incident;

(5) Description of **the** location of **the** adverse incident;

(6) Description of **the** adverse incident identified and **the** EPA pesticide registration number for each product that was applied in **the** area of **the** adverse incident; and

(7) Description of any steps **the** operator has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If **the** operator is unable to notify **the** department within 24 hours, notification shall be made as soon as possible and

the rationale for why **the** notification was not possible within 24 hours shall be provided.

The adverse incident notification and reporting requirements are in addition to what **the** registrant is required to submit under FIFRA § 6(a)(2) and its implementing regulations at 40 CFR Part 159.

b. Reporting of adverse incidents is not required under this permit in **the** following situations:

(1) **The** operator is aware of facts that clearly establish that **the** adverse incident was not related to toxic effects or exposure from **the** pesticide application.

(2) **The** operator has been notified in writing by **the** ~~board~~ department that **the** reporting requirement has been waived for this incident or category of incidents.

(3) **The** operator receives notification of a potential adverse incident but that notification and supporting information are clearly erroneous.

(4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.

c. Five-day adverse incident written report. Within five days of a reportable adverse incident pursuant to Part I D 2 a, **the** operator shall provide a written report of **the** adverse incident to **the** appropriate DEQ regional office at **the** address listed in Part I D 5. **The** adverse incident report must include at least **the** following information:

(1) Information required to be provided in Part I D 2 a;

(2) Date and time **the** operator contacted DEQ notifying **the** department of **the** adverse incident, and with whom **the** operator spoke at DEQ, and any instructions **the** operator received from DEQ;

(3) Location of incident, including **the** names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

(4) A description of **the** circumstances of **the** adverse incident including species affected, estimated number of individuals, and approximate size of dead or distressed organisms;

(5) Magnitude and scope of **the** affected area (e.g., aquatic square area or total stream distance affected);

(6) Pesticide application rate, intended use site, method of application, and name of pesticide product, description of pesticide ingredients, and EPA registration number;

(7) Description of **the** habitat and **the** circumstances under which **the** adverse incident occurred (including any available ambient water data for pesticides applied);

(8) If laboratory tests were performed, indicate what tests were performed, and when, and provide a summary of **the** test results within five days after they become available;

(9) If applicable, explain why it is believed **the** adverse incident could not have been caused by exposure to **the** pesticide;

(10) Actions to be taken to prevent recurrence of adverse incidents; and

(11) Signed and dated in accordance with Part II G.

The operator shall report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.

d. Adverse incident to threatened or endangered species or critical habitat.

(1) Notwithstanding any of the other adverse incident notification requirements of this section, if the operator becomes aware of an adverse incident to threatened or endangered species or critical habitat that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the:

(a) National Marine Fisheries Service (NMFS) and the Virginia Department of [~~Game and Inland Fisheries~~ (DGIF) Wildlife Resources (DWR)] in the case of an anadromous or marine species;

(b) U.S. Fish and Wildlife Service (FWS) and the [~~DGIF~~ DWR] in the case of an animal or invertebrate species; or

(c) FWS and the Virginia Department of Agriculture and Consumer Services in the case of plants or insects.

(2) Threatened or endangered species or critical habitats include the following:

(a) Federally listed threatened or endangered species;

(b) Federally designated critical habitat;

(c) State-listed threatened or endangered species; and

(d) Tier I (critical conservation need) or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan (www.bewildvirginia.org) (<http://bewildvirginia.org/wildlife-action-plan/>).

(3) This notification must be made by telephone immediately upon the operator becoming aware of the adverse incident and must include at least the following information:

(a) The caller's name and telephone number;

(b) Operator's name and mailing address;

(c) The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;

(d) How and when the operator became aware of the adverse incident;

(e) Description of the location of the adverse incident;

(f) Description of the adverse incident, including the EPA pesticide registration number for each product the operator applied in the area of the adverse incident;

(g) Description of any steps the operator has taken or will take to alleviate the adverse impact to the species; and

(h) Date and time of application. Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS (www.nmfs.noaa.gov)

(<https://www.fisheries.noaa.gov/species-directory/threatened-endangered>) for anadromous or marine species or FWS (www.fws.gov) (<https://www.fws.gov/species/search>) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (www.dgif.virginia.gov) (<https://dwr.virginia.gov/wildlife/wildlife-information/>). Listing of state threatened or endangered plants and insects can be found in §§ 3.2-1000 through 3.2-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code of Virginia and the Virginia Administrative Code must be referenced in order to obtain the complete plant and insect list). (Contact information for these agencies can be found on the contact information form or through the DEQ website.)

3. Reportable spills and leaks.

a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 117, or 302 occurs in any 24-hour period, the operator shall notify the department (see Part I D 2) as soon as the operator has knowledge of the release. Department contact information must be kept in locations that are readily accessible and available in the area where a spill, leak, or other unpermitted discharge may occur.

b. Five-day spill, leak, or other unauthorized discharge report. Within five days of the operator becoming aware of a spill, leak, or other unauthorized discharge triggering the notification in subdivision 3 of this subsection, the operator shall submit a written report to the appropriate DEQ regional office at the address listed in Part I D 5. The report shall contain the following information:

(1) A description of the nature and location of the spill, leak, or discharge;

(2) The cause of the spill, leak, or discharge;

(3) The date on which the spill, leak, or discharge occurred;

(4) The length of time that the spill, leak, or discharge continued;

(5) The volume of the spill, leak, or discharge;

(6) If the discharge is continuing, how long it is expected to continue and what the expected total volume of the discharge will be;

(7) A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and

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(8) Any steps planned or taken to prevent recurrence of such a spill, leak, or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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

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

4. Recordkeeping and annual reporting. The operator shall keep records as required in this permit. These records must be accurate, complete, and sufficient to demonstrate compliance with the conditions of this permit. The operator can rely on records and documents developed for other obligations, such as requirements under FIFRA and state or local pesticide programs, provided all requirements of this permit are satisfied. The board department recommends that all operators covered under this permit keep records of acres or linear miles treated for all applicable use patterns covered under this general permit.

a. All operators must keep the following records:

(1) A copy of any adverse incident reports (see Part I D 2 c).

(2) The operator's rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part I D 2 b.

b. Any operator performing the application of a pesticide or who has day-to-day control of the application and exceeding the annual application thresholds established in 9VAC25-800-30 C must also maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

(1) Name, address, and telephone number of customer and address or location, if different, of site of application;

(2) Name and VDACS certification number of the person making the application or certification number of the supervising certified applicator;

(3) Day, month, and year of application;

(4) Type of plants, crop, animals, or sites treated and principal pests to be controlled;

(5) Acreage, area, or number of plants or animals treated;

(6) Brand name or common product name;

(7) EPA registration number;

(8) Amount of pesticide concentrate and amount of diluting used, by weight or volume, in mixture applied; and

(9) Type of application equipment used.

c. All required records must be assembled as soon as possible but no later than 30 days following completion of

such activity. The operator shall retain any records required under this permit for at least three years from the date of the pesticide application. The operator shall make available to the board department, including an authorized representative of the board department, all records kept under this permit upon request and provide copies of such records, upon request.

d. Annual reporting.

(1) Any operator applying pesticides that reports an adverse incident as described in Part I D 2 must submit an annual report to the department no later than February 10 of the following year (and retain a copy for the operator's records).

(2) The annual report must contain the following information:

(a) Operator's name;

(b) Contact person's name, title, email address (where available), and [phone telephone] number;

(c) A summary report of all adverse incidents that occurred during the previous calendar year; and

(d) A summary of any corrective actions, including spill responses, in response to adverse incidents, and the rationale for such actions.

5. DEQ contact information and mailing addresses.

a. All incident reports under Part I D 2 must be sent to the appropriate DEQ regional office within five days of the operator becoming aware of the adverse incident.

b. All other written correspondence concerning discharges must be sent to the address of the appropriate DEQ regional office listed in Part I D 5 e d.

NOTE: c. The immediate (within 24 hours) reports required in Part I D 2 may shall be made to the department's regional office. Reports may be made by telephone, fax, or online (<http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>) (<https://www.deq.virginia.gov/get-involved/pollution-response>) (online reporting preferred).

For reports outside normal working hours, leave a message, and this shall fulfill the immediate reporting requirement the online portal shall be used. For emergencies, call the Virginia Department of Emergency Management maintains a 24 hour telephone service Emergency Operations Center (24-hours) [at] 1-800-468-8892.

c. DEQ regional office addresses.

(1) Blue Ridge Regional Office (BRRO)

3019 Peters Creek Road 901 Russell Drive

Roanoke Salem, VA 24019 24153

(540) 562-6700

(fax - for all regional offices) (804) 698-4178

(2) Northern Virginia Regional Office (NVRO)

13901 Crown Court

Woodbridge, VA 22193

(703) 583-3800

(3) Piedmont Regional Office (PRO)

4949-A Cox Road

Glen Allen, VA 23060

(804) 527-5020

(4) Southwest Regional Office (SWRO)

355 Deadmore St.

P.O. Box 1688

Abingdon, VA 24212

(276) 676-4800

(5) Tidewater Regional Office (TRO)

5636 Southern Blvd.

Virginia Beach, VA 23462

(757) 518-2000

(6) Valley Regional Office (VRO)

4411 Early Road

Mailing address: P.O. Box 3000

Harrisonburg, VA 22801

(540) 574-7800

Part II

Conditions Applicable to all VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individuals who performed the sampling or measurements;
 - c. The dates and times analyses were performed;
 - d. The individuals who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and copies of all reports required by this permit for a period of at least three years from the date that coverage under this permit expires. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board department.

C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the department request that the operator submit monitoring results, the following subdivisions would apply.

1. The operator shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved, or specified by the department.
3. If the operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.
4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The operator shall furnish to the department, within a reasonable time, any information that the board department may request to determine whether cause exists for terminating coverage under this permit or to determine compliance with this permit. The board department may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The operator shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

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

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

G. Signature requirements.

1. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in this subsection or by a duly authorized representative of that person described in subdivision 2 of this subsection.

a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to [~~assure~~ ensure] long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

2. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in subdivision 1 of this subsection;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of

the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The signed and dated written authorization is included in the PDMP. A copy of this authorization must be submitted to the department if requested.

3. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

4. Any person signing documents in accordance with subdivision 1 or 2 of this subsection must include the following certification:

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

H. Duty to comply. The operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action, for permit coverage termination, or denial of permit coverage renewal.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

I. Duty to reapply. If the operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the operator must have coverage under a new permit.

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

K. State law. Nothing in this permit shall be construed to preclude **the** institution of any legal action under, or relieve **the** operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of **the** Clean Water Act. Nothing in this permit shall be construed to relieve **the** operator from civil and criminal penalties for noncompliance.

L. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude **the** institution of any legal action or relieve **the** operator from any responsibilities, liabilities, or penalties to which **the** operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of **the** State Water Control Law.

M. Proper operation and maintenance. **The** operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by **the** operator to achieve compliance with **the** conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires **the** operation of backup or auxiliary facilities or similar systems that are installed by **the** operator only when **the** operation is necessary to achieve compliance with **the** conditions of this permit.

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

O. Duty to mitigate. **The** operator shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or **the** environment.

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

Q. Inspection and entry. **The** operator shall allow **the** director, or an authorized representative (including an authorized contractor acting as a representative of **the** director), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon **the** operator premises where a regulated facility or activity is located or conducted, or where records must be kept under **the** conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under **the** conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for **the** purposes of assuring permit compliance or as otherwise authorized by **the** Clean Water Act and **the** State Water Control Law, any substances or parameters at any location.

For purposes of this section, **the** time for inspection shall be deemed reasonable during regular business hours or whenever **the** facility is discharging. Nothing contained [~~herein~~ in this general permit] shall make an inspection unreasonable during an emergency.

R. Permit actions. Permit coverage may be terminated for cause. **The** filing of a request by **the** operator for a permit termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Transfer of permit coverage. Permits are not transferable to any person except after notice to **the** department. **The** transfer of permit coverage under this pesticide general permit is not anticipated since coverage is automatic where an operator meets **the** permit eligibility requirements.

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

VA.R. Doc. No. R22-6928; Filed April 21, 2023, 10:19 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Notice of Extension of Emergency Regulation

Title of Regulation: 18VAC85-80. Regulations Governing **the** Practice of Occupational Therapy (amending 18VAC85-80-10, 18VAC85-80-26, 18VAC85-80-70, 18VAC85-80-71).

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

The Governor has approved **the** request of **the** Board of Medicine to extend **the** expiration date of **the** emergency regulation for 18VAC85-80 for six months as provided for in § 2.2-4011 D of **the** Code of Virginia. Therefore, **the** emergency regulation is continued in effect through December 29, 2023. This extension is required because **the** regulatory action is necessary to conform regulation to Chapter 242 of **the** 2021 Acts of Assembly, Special Session I, which enters Virginia into **the** Occupational Therapy Interjurisdictional Compact and requires **the** board to promulgate regulations to

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implement the legislation. The board promulgated an emergency action, which is currently effective but set to expire on June 30, 2023. The Board of Medicine voted on proposed regulations to replace the emergency regulations at its April 8, 2022, and submitted the proposed regulations for executive branch review. The board therefore requests an extension of the emergency regulations. The emergency regulation was published in [38:11 V.A.R. 1124-1126 January 17, 2022](#).

Effective Date Extended Through: December 29, 2023.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4558, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R22-6878; Filed May 3, 2023, 2:45 p.m.

BOARD OF NURSING

Proposed Regulation

Title of Regulation: **18VAC90-70. Regulations Governing the Practice of Licensed Certified Midwives (adding 18VAC90-70-10 through 18VAC90-70-260).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.04 of the Code of Virginia.

Public Hearing Information:

July 18, 2023 - 9:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Henrico, VA 23233

Public Comment Deadline: July 21, 2023.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations of the Boards of Nursing and Medicine are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which specifically states that the general powers and duties of health regulatory boards shall be to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) that are reasonable and necessary to administer effectively the regulatory system.

The specific legislative authority for this action can be found in Chapters 200 and 201 of the 2021 Acts of Assembly, Special Session I, which amended § 54.1-2900 of the Code of Virginia to create a definition of a licensed certified midwife as an individual licensed as a certified midwife by the Boards of Nursing and Medicine and to include a definition of the practice of licensed certified midwifery. Sections 54.1-2957.04 and 54.1-3005 of the Code of Virginia also provide additional directives to the boards to promulgate regulations to license certified midwives. Sections 54.1-3303 and 54.1-3408 of the Code of Virginia provide licensed certified midwives have prescriptive authority.

Purpose: The rationale of the regulatory change is to comply with a legislative mandate to license certified midwives and to do so while protecting the health and safety of citizens of the Commonwealth. The boards have promulgated a regulation to establish qualifications for licensure and renewal of licensure that ensure minimal competency to protect the health and safety of patients who receive the services of licensed certified midwives. The regulation promulgated is also necessary to provide standards for confidentiality, patient records, dual relationships, and informed consent to protect public health and safety.

Substance: Certified midwives are not currently a regulated health profession in Virginia; therefore the boards created a new regulation for licensed certified midwives. The chapter includes requirements for licensure and practice as required by § 54.1-2957.04 of the Code of Virginia, standard fees related to administrative and disciplinary costs that are levied on all licensees, requirements for renewal and reinstatement, continuing competency requirements, and unprofessional conduct violations.

Issues: The primary advantage to private citizens is that licensed certified midwives will be available to provide care to patients while being regulated by the boards, thereby ensuring the safety of patients who receive care from a licensed certified midwife. There are no disadvantages to the public. There are no primary advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

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

Summary of the Proposed Amendments to Regulation. Pursuant to the identical Chapters 200 and 201 of the 2021 Acts of Assembly, Special Session I,² the Boards of Nursing and Medicine (Boards) propose to establish criteria for the licensure and renewal of a license as a certified midwife.

Background.

Types of Midwives. Prior to the 2021 legislation, there were two types of licensed midwives in the Commonwealth: licensed professional midwives and licensed certified nurse midwives. The legislation established a third category, licensed certified midwives.

GraduateNursingEDU.org describes the work of each type of midwife as follows:³

Professional midwives (PM):

Monitor a woman's complete (not just physical) well-being from pre-natal through post-natal

Identify women who need to see an obstetrician and giving them appropriate referrals

Give each mother individualized education, counseling, and prenatal care, assisting during labor and delivery, and supporting **the** mother and newborn after **the** birth

Use as few technological interventions as possible

Certified Nurse-Midwives (CNMs) and Certified Midwives (CMs) are highly trained health care professionals who provide care for women not only during pregnancy and birth but also from adolescence through **the** end of life. More specifically:

CNMs are nurses who have completed a graduate-level nurse-midwife program and passed a certification exam from **the** American Midwifery Certification Board, while CMs are non-nurses who have completed a graduate-level midwifery degree program and passed a certification exam from **the** American Midwifery Certification Board.

CNMs and CMs are qualified to provide **the** same level of care. All states license CNMs for independent practice but not all states license CMs. **The** American College of Nurse Midwives reports that CNMs and CMs attended 312,129 births in **the** U.S. in 2010, representing 11.6% of all vaginal births and 7.8% of total births.

Under Virginia law, PMs cannot prescribe medications. However, Virginia law allows CNMs to prescribe medications. **The** legislation also established that CMs could prescribe medications. In terms of scope of practice, **the** only substantial difference between CNMs and CMs under **the** proposed regulation and statute are practice agreements.⁴

Practice Agreements. Section 54.1-2957 H of **the** Cod of Virginia⁵ states that CNMs who have practiced fewer than 1,000 hours must practice in consultation with either a licensed physician or another CNM who has practiced for at least two years, in accordance with a practice agreement between them. Such practice agreement must address **the** availability of **the** physician or **the** experienced CNM for routine and urgent consultation on patient care. A CNM who has completed 1,000 hours of practice as a certified nurse midwife may practice without a practice agreement.⁶ A CNM authorized to practice without a practice agreement still should consult and collaborate with and refer patients to such other health care providers as may be appropriate for **the** care of **the** patient.

The legislation requires CMs to practice in consultation with a licensed physician in accordance with a practice agreement between **the** licensed certified midwife and **the** licensed physician. **The** practice agreement must address **the** availability of **the** physician for routine and urgent consultation on patient care. It must be with a licensed physician. **The** practice agreement remains a requirement regardless of how much experience **the** CM acquires.

Estimated Benefits and Costs. **The** following table describes **the** requirements to obtain initial licensure in **the** proposed regulation for CMs and in existing regulation for CNMs, respectively.

Obtaining Initial Licensure	
CM (Proposed)	CNM (Existing)
Not required to be a registered nurse	Hold a current, active license as a registered nurse (RN) in Virginia or hold a current multistate licensure privilege as an RN; Application fee for RN license is \$190;
Graduate degree in midwifery from a program that is accredited by the Accreditation Commission for Midwifery Education (ACME)	Graduate degree in nurse-midwifery from a program that is accredited by ACME
Current certification as a certified midwife by the American Midwifery Certification Board (AMCB) To become certified pass the AMCB Certification Examination in Nurse-Midwifery/Midwifery (same exam for both); Pay the \$500 examination fee	Current certification as a certified nurse midwife by AMCB To become certified pass the AMCB Certification Examination in Nurse-Midwifery/Midwifery (same exam for both); Pay the \$500 examination fee
Pay the \$125 application fee	Pay the \$125 application fee

The time and fees to earn a master's degree in midwifery and nurse-midwifery are similar.⁸ CMs would have to pass **the** same AMCB certification exam and pay **the** same \$500 examination fee to AMCB as CNMs. Also CMs would have to pay **the** same \$125 application fee to **the** Boards as CNMs. **The** primary difference is that CMs would not be required to have an RN license. For someone who is not already an RN and wants to do **the** work of a CNM (or CM), **the** establishment of CM licensure is substantially beneficial in that **the** time and cost of acquiring RN licensure could be avoided.

The following table describes **the** requirements to maintain licensure in **the** proposed regulation for CMs and in existing regulation for CNMs, respectively.

Maintaining/Renewing Licensure	
CM (Proposed)	CNM (Existing)
Not required to be a registered nurse (RN)	Maintain RN licensure Biennial renewal fee for RN license is \$140
Maintain AMCB certification by: ⁹ 1) Successfully completing three AMCB Certificate Maintenance Modules during the five-year certification cycle (there's a \$75 fee to obtain the articles needed to complete the modules);	Maintain AMCB certification by: 1) Successfully completing three AMCB Certificate Maintenance Modules during the five-year certification cycle (there's a \$75 fee to obtain the articles needed to complete the modules);

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obtain the articles needed to complete the modules); 2) Obtaining 20 contact hours of approved continuing education units; and 3) paying the \$70 annual maintenance fee	2) Obtaining 20 contact hours of approved continuing education units; and 3) paying the \$70 annual maintenance fee
Virginia regulation specifies that eight hours of the continuing education be in pharmacology or pharmacotherapeutics for each biennium.	Virginia regulation specifies that eight hours of the continuing education be in pharmacology or pharmacotherapeutics for each biennium.
Pay the \$80 biennial licensure renewal fee	Pay the \$80 biennial licensure renewal fee

Other than maintaining RN licensure, **the** requirements for CM license renewal under **the** proposed regulation are **the** same as **the** requirements for CNM license renewal in 18VAC90-30-10 Regulations Governing **the** Licensure of Nurse Practitioners. **The** establishment of **the** CM license would allow a CNM who does not mind maintaining a practice agreement with a licensed physician to choose to abandon RN and CNM licensure, and obtain CM licensure instead. Instead of paying \$220 in biennial license renewal fees to **the** Boards, she would only have to pay \$80. Additionally, **the** \$120 application fee for CM licensure would still be less than **the** \$140 RN license renewal fee. As stated above, other than practice agreements, **the** scope of practice for CMs is essentially **the** same as for CNMs. Businesses and Other Entities Affected. **The** proposed regulation potentially affects people who wish to become CMs, **the** 443 licensed CNMs in **the** Commonwealth,¹⁰ and potential employers of CMs. **The** 51 licensed inpatient hospitals that have obstetric services in **the** Commonwealth may be particularly affected.¹¹ As mentioned above, outside of being able to work without a practice agreement, **the** scope of practice for CNMs and CMs is essentially **the** same. Other than solo private practice, seeing where CNMs work may indicate where licensed CMs would work. According to survey data from a December 2021 report (**the** most recent available) from **the** Virginia Healthcare Workforce Data Center¹² **the** primary employers of CNMs in **the** Commonwealth are distributed as follows:

Establishment Type	Percentage of CNMs
Hospital, Inpatient Department	19%
Private practice, group	19%
Other Practice Setting	15%
Clinic, Primary Care or Non-Specialty	13%
Physician Office	13%
Academic Institution (Teaching or Research)	8%
Clinic, Non-Surgical Specialty	6%
Hospital, Outpatient Department	3%
Private practice, solo	3%

The Code of Virginia requires DPB to assess whether an adverse impact may result from **the** proposed regulation.¹³ An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if **the** benefits exceed **the** costs for all entities combined. **The** proposed regulation neither increases net costs nor reduces net revenue. Thus, no adverse impact is indicated.

Small Businesses¹⁴ Affected.¹⁵ **The** proposed regulation does not adversely affect small businesses.

Localities¹⁶ Affected.¹⁷ **The** proposed regulation neither disproportionately affects particularly localities nor introduces costs for local governments.

Projected Impact on Employment. By making it less costly to obtain licensure to provide CNM-type services, **the** establishment of **the** CM license may increase **the** number of individuals who pursue this type of employment.

Effects on **the** Use and Value of Private Property. As mentioned, by making it less costly to obtain licensure to provide CNM-type services, **the** establishment of **the** CM license may increase **the** number of individuals who pursue this type of employment. A larger labor pool of qualified practitioners may reduce labor costs for their employers, moderately increasing their value. **The** proposed regulation does not affect real estate development costs.

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

²See <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0200>

³<https://www.graduatnursingedu.org/careers/certified-nurse-midwife/what-is-a-midwife/>, accessed on October 4, 2022.

⁴For CNMs, 18VAC90-30-10 Regulations Governing **the** Licensure of Nurse Practitioners defines "practice agreement" as "a written or electronic statement, jointly developed by **the** collaborating patient care team physician and **the** licensed nurse practitioner that describes **the** procedures to be followed and **the** acts appropriate to **the** specialty practice area to be performed by **the** licensed nurse practitioner in **the** care and management of patients. **The** practice agreement also describes **the** prescriptive authority of **the** nurse practitioner, if applicable. For a nurse practitioner licensed in **the** category of certified nurse midwife, **the** practice agreement is a statement jointly developed with **the** consulting physician or a certified nurse midwife with at least two years of clinical experience."

For CMs, **the** proposed regulation defines "practice agreement" as "a written or electronic statement, jointly developed by **the** consulting licensed physician and **the** licensed certified midwife, that describes **the** availability of **the** physician for routine and urgent consultation on patient care."

⁵See <https://law.lis.virginia.gov/vacode/54.1-2957/>

⁶Ibid

⁷See <https://www.amcbmidwife.org/amcb-certification>

⁸Source: Department of Health Professions

⁹AMCB also allows AMCB certification maintenance via taking and passing the current AMCB Certification Examination and paying the \$500 examination fee.

¹⁰Data source: Department of Health Professions

¹¹Data source: Virginia Department of Health

¹²See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/nurse/2021NPCcomparison.pdf>

¹³Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

¹⁴Pursuant to § 2.2-4007.04, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹⁵If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

¹⁶Locality: can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁷Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to the Economic Impact Analysis: The Boards of Nursing and Medicine concur with the economic impact analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapters 200 and 201 of the 2021 Acts of Assembly, Special Session I, the proposed action establishes a new regulation to license and provide practice requirements for certified midwives. Section 54.1- 2957.04 of the Code of Virginia specifies the credential that will be considered as qualification for licensure and renewal, the requirement for a practice agreement, and the prescriptive authority for the profession. The proposed regulation establishes requirements similar to other licensed professions for a fee structure, renewal or reinstatement, continuing competency, and standards of practice.

Chapter 70

Regulations Governing the Practice of Licensed Certified Midwives

Part I

General Provisions

18VAC90-70-10. Definitions.

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

"Acute pain" means pain that occurs within the normal course of a disease or condition or as the result of surgery for which controlled substances containing an opioid may be prescribed for no more than three months.

"Approved program" means a midwifery education program that is accredited by the Accreditation Commission for Midwifery Education or its successor.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances containing an opioid may be prescribed for a period greater than three months.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Licensed certified midwife" means an advanced practice midwife who is jointly licensed by the Boards of Nursing and Medicine pursuant to § 54.1-2957.04 of the Code of Virginia.

"MME" means morphine milligram equivalent.

"Practice agreement" means a written or electronic statement, jointly developed by the consulting licensed physician and the licensed certified midwife, that describes the availability of the physician for routine and urgent consultation on patient care.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

18VAC90-70-20. Delegation of authority.

A. The boards hereby delegate to the Executive Director of the Virginia Board of Nursing the authority to issue the initial licensure and the biennial renewal of such licensure to those persons who meet the requirements set forth in this chapter and to grant extensions or exemptions for compliance with continuing competency requirements as set forth in 18VAC90-70-90 E and F. Questions of eligibility shall be referred to the Committee of the Joint Boards of Nursing and Medicine.

B. All records and files related to the licensure of licensed certified midwives shall be maintained in the office of the Virginia Board of Nursing.

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18VAC90-70-30. Committee of the Joint Boards of Nursing and Medicine.

A. The Committee of the Joint Boards of Nursing and Medicine, appointed pursuant to 18VAC90-30-30 and consisting of three members appointed from the Board of Medicine and three members appointed from the Board of Nursing, shall administer this chapter.

B. In accordance with 18VAC90-30-30, the committee may, in its discretion, appoint an advisory committee. The advisory committee shall include practitioners specified in 18VAC90-30-30.

18VAC90-70-40. Fees.

Fees required in connection with the licensure of certified midwives are:

<u>1. Application</u>	<u>\$125</u>
<u>2. Biennial licensure renewal</u>	<u>\$80</u>
<u>3. Late renewal</u>	<u>\$25</u>
<u>4. Reinstatement of licensure</u>	<u>\$150</u>
<u>5. Verification of licensure to another jurisdiction</u>	<u>\$35</u>
<u>6. Duplicate license</u>	<u>\$15</u>
<u>7. Duplicate wall certificate</u>	<u>\$25</u>
<u>8. Handling fee for returned check or dishonored credit card or debit card</u>	<u>\$50</u>
<u>9. Reinstatement of suspended or revoked license</u>	<u>\$200</u>

Part II Licensure

18VAC90-70-50. Licensure generally.

A. No person shall perform services as a certified midwife in the Commonwealth of Virginia except as prescribed in this chapter and when licensed by the Boards of Nursing and Medicine.

B. The boards shall license applicants who meet the qualifications for licensure as set forth in 18VAC90-70-60 or 18VAC90-70-70.

18VAC90-70-60. Qualifications for initial licensure.

An applicant for initial licensure as a licensed certified midwife shall:

1. Submit evidence of a graduate degree in midwifery from an approved program;
2. Submit evidence of current certification as a certified midwife by the American Midwifery Certification Board;
3. File the required application; and

4. Pay the application fee prescribed in 18VAC90-70-40.

18VAC90-70-70. Qualifications for licensure by endorsement.

An applicant for licensure by endorsement as a licensed certified midwife shall:

1. Provide verification of a license as a certified midwife in another United States jurisdiction with a license in good standing or, if lapsed, eligible for reinstatement;
2. Submit evidence of current certification as a certified midwife by the American Midwifery Certification Board;
3. File the required application; and
4. Pay the application fee prescribed in 18VAC90-70-40.

18VAC90-70-80. Renewal of licensure.

A. Licensure of a licensed certified midwife shall be renewed biennially.

B. The renewal notice of the license shall be sent to the last known address of record of each licensed certified midwife. 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 certified midwife shall attest to current certification as a certified midwife by the American Midwifery Certification Board and submit the license renewal fee prescribed in 18VAC90-70-40.

D. The license shall automatically lapse if the licensee fails to renew by the expiration date. Any person practicing as a certified midwife during the time a license has lapsed shall be subject to disciplinary actions by the boards.

18VAC90-70-90. Continuing competency requirements.

A. In order to renew a license biennially, a licensed certified midwife shall hold a current certification as a certified midwife by the American Midwifery Certification Board.

B. A licensed certified midwife shall obtain a total of eight hours of continuing education in pharmacology or pharmacotherapeutics for each biennium.

C. The licensed certified midwife shall retain evidence of compliance with this section 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 at least 1.0% of their licensed certified midwives to determine compliance. The licensed certified midwives 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 grant an extension of the deadline for continuing competency requirements for up to one year for

good cause shown upon a written request from the licensee submitted prior to the renewal date.

F. The boards may delegate to the committee the authority to grant an exemption for all or part of the continuing education requirements in subsection B of this section for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC90-70-100. Reinstatement of license.

A. A licensed certified midwife whose license has lapsed may be reinstated within one renewal period by payment of the current renewal fee and the late renewal fee.

B. An applicant for reinstatement of license lapsed for more than one renewal period shall:

1. File the required application and reinstatement fee; and
2. Provide evidence of current professional competency consisting of:
 - a. Current certification by the American Midwifery Certification Board;
 - b. Continuing education hours completed during the period in which the license was lapsed, equal to the number required for licensure renewal during that period, not to exceed 120 hours; or
 - c. If applicable, a current, unrestricted license as a certified midwife in another jurisdiction.

C. An applicant for reinstatement of a license following suspension or revocation shall:

1. Petition for reinstatement and pay the reinstatement fee; and
2. Present evidence that he is competent to resume practice as a licensed certified midwife in Virginia, to include:
 - a. Current certification by the American Midwifery Certification Board; and
 - b. Continuing education hours taken during the period in which the license was suspended or revoked, equal to the number required for licensure during that period, not to exceed 120 hours.

The committee shall act on the petition pursuant to the Administrative Process Act (§ 2.2-4000, et seq. of the Code of Virginia).

Part III

Practice of Licensed Certified Midwives

18VAC90-70-110. Practice of licensed certified midwives.

A. All licensed certified midwives shall practice in accordance with a written or electronic practice agreement as defined in 18VAC90-70-10.

B. The written or electronic practice agreement shall include provisions for the availability of the physician for routine and urgent consultation on patient care.

C. The practice agreement shall be maintained by the licensed certified midwife and provided to the boards upon request. For licensed certified midwives providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the licensed certified midwife's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the licensed certified midwife shall be responsible for providing a copy to the boards upon request.

D. The practice of licensed certified midwives shall be consistent with the standards of care for the profession.

E. The licensed certified midwife shall include on each prescription issued or dispensed the licensed certified midwife's signature and Drug Enforcement Administration (DEA) number, when applicable.

F. The licensed certified midwife shall disclose to patients at the initial encounter that the licensed certified midwife is a licensed certified midwife. Such disclosure may be included on a prescription or may be given in writing to the patient.

G. A licensed certified midwife who provides health care services to a patient outside of a hospital or birthing center shall disclose to that patient, when appropriate, information on health risks associated with births outside of a hospital or birthing center, including to risks associated with vaginal births after a prior cesarean section, breech births, births by women experiencing high-risk pregnancies, and births involving multiple gestation.

H. The licensed certified midwife shall disclose, upon request of a patient or a patient's legal representative, the name of the consulting physician, and information regarding how to contact the consulting physician.

Part IV **Prescribing**

18VAC90-70-120. Prescribing for self or family.

A. Treating or prescribing shall be based on a bona fide practitioner-patient relationship, and prescribing shall meet the criteria set forth in § 54.1-3303 of the Code of Virginia.

B. A licensed certified midwife shall not prescribe a controlled substance to himself or a family member, other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia, unless the prescribing occurs in an emergency situation or in isolated settings where there is no other qualified practitioner available to the patient, or it is for a single episode of an acute illness through one prescribed course of medication.

C. When treating or prescribing for self or family, the licensed certified midwife shall maintain a patient record documenting

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compliance with statutory criteria for a bona fide practitioner-patient relationship.

18VAC90-70-130. Waiver for electronic prescribing.

A. A prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia, unless the prescription qualifies for an exemption as set forth in § 54.1-3408.02 C.

B. Upon written request, the boards may grant a one-time waiver of the requirement of subsection A of this section for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

Part V

Management of Acute Pain

18VAC90-70-140. Evaluation of the patient for acute pain.

A. The requirements of this part shall not apply to:

1. The treatment of acute pain related to (i) cancer, (ii) sickle cell, (iii) a patient in hospice care, or (iv) a patient in palliative care;
2. The treatment of acute pain during an inpatient hospital admission or in a nursing home or an assisted living facility that uses a sole source pharmacy; or
3. A patient enrolled in a clinical trial as authorized by state or federal law.

B. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain, the practitioner shall give a short-acting opioid in the lowest effective dose for the fewest possible days.

C. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, the prescriber shall perform a history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance misuse as a part of the initial evaluation.

18VAC90-70-150. Treatment of acute pain with opioids.

A. Initiation of opioid treatment for patients with acute pain shall be with short-acting opioids.

1. A prescriber providing treatment for a patient with acute pain shall not prescribe a controlled substance containing an opioid in a quantity that exceeds a seven-day supply as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the medical record. This shall also apply to prescriptions of a

controlled substance containing an opioid upon discharge from an emergency department.

2. An opioid prescribed as part of treatment for a surgical procedure shall be for no more than 14 consecutive days in accordance with manufacturer's direction and within the immediate perioperative period, unless extenuating circumstances are clearly documented in the medical record.

B. Initiation of opioid treatment for all patients shall include the following:

1. The practitioner shall carefully consider and document in the medical record the reasons to exceed 50 MME per day.
2. Prior to exceeding 120 MME per day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist.
3. Naloxone shall be prescribed for any patient when risk factors of prior overdose, substance misuse, doses in excess of 120 MME per day, or concomitant benzodiazepine are present.

C. Due to a higher risk of fatal overdose when opioids are used with benzodiazepines, sedative hypnotics, carisoprodol, and tramadol (an atypical opioid), the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

D. Buprenorphine is not indicated for acute pain in the outpatient setting, except when a prescriber who has obtained a U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) waiver is treating pain in a patient whose primary diagnosis is the disease of addiction.

18VAC90-70-160. Medical records for acute pain.

The medical record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed or administered to include the date, type, dosage, and quantity prescribed or administered.

Part VI

Management of Chronic Pain

18VAC90-70-170. Evaluation of the chronic pain patient.

A. The requirements of this part shall not apply to:

1. The treatment of chronic pain related to (i) cancer, (ii) sickle cell, (iii) a patient in hospice care, or (iv) a patient in palliative care;
2. The treatment of chronic pain during an inpatient hospital admission or in a nursing home or an assisted living facility that uses a sole source pharmacy; or

3. A patient enrolled in a clinical trial as authorized by state or federal law.

B. Prior to initiating management of chronic pain with a controlled substance containing an opioid, a medical history and physical examination, to include a mental status examination, shall be performed and documented in the medical record, including:

1. The nature and intensity of the pain;
2. Current and past treatments for pain;
3. Underlying or coexisting diseases or conditions;
4. The effect of the pain on physical and psychological function, quality of life, and activities of daily living;
5. Psychiatric, addiction, and substance misuse histories of the patient and any family history of addiction or substance misuse;
6. A urine drug screen or serum medication level;
7. A query of the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia;
8. An assessment of the patient's history and risk of substance misuse; and
9. A request for prior applicable records.

C. Prior to initiating opioid analgesia for chronic pain, the practitioner shall discuss with the patient the known risks and benefits of opioid therapy and the responsibilities of the patient during treatment to include securely storing the drug and properly disposing of any unwanted or unused drugs. The practitioner shall also discuss with the patient an exit strategy for the discontinuation of opioids in the event they are not effective.

18VAC90-70-180. Treatment of chronic pain with opioids.

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids.

B. In initiating opioid treatment for all patients, the practitioner shall:

1. Carefully consider and document in the medical record the reasons to exceed 50 MME per day;
2. Prior to exceeding 120 MME per day, the practitioner shall document in the medical record the reasonable justification for such doses or refer to or consult with a pain management specialist;
3. Prescribe naloxone for any patient when risk factors of prior overdose, substance misuse, doses in excess of 120 MME per day, or concomitant benzodiazepine are present; and
4. Document the rationale to continue opioid therapy every three months.

C. Buprenorphine mono-product in tablet form shall not be prescribed for chronic pain.

D. Due to a higher risk of fatal overdose when opioids, including buprenorphine, are given with other opioids, benzodiazepines, sedative hypnotics, carisoprodol, and tramadol (an atypical opioid), the prescriber shall only co-prescribe these substances when there are extenuating circumstances and shall document in the medical record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

E. The practitioner shall regularly evaluate for opioid use disorder and shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation for treatment if indicated.

18VAC90-70-190. Treatment plan for chronic pain.

A. The medical record shall include a treatment plan that states measures to be used to determine progress in treatment, including pain relief and improved physical and psychosocial function, quality of life, and daily activities.

B. The treatment plan shall include further diagnostic evaluations and other treatment modalities or rehabilitation that may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

C. The prescriber shall record in the medical records the presence or absence of any indicators for medication misuse or diversion and take appropriate action.

18VAC90-70-200. Informed consent and agreement to treatment of chronic pain.

A. The practitioner shall document in the medical record informed consent, to include risks, benefits, and alternative approaches, prior to the initiation of opioids for chronic pain.

B. There shall be a written treatment agreement, signed by the patient, in the medical record that addresses the parameters of treatment, including those behaviors that will result in referral to a higher level of care, cessation of treatment, or dismissal from care.

C. The treatment agreement shall include notice that the practitioner will query and receive reports from the Prescription Monitoring Program and permission for the practitioner to:

1. Obtain urine drug screen or serum medication levels, when requested; and
2. Consult with other prescribers or dispensing pharmacists for the patient.

D. Expected outcomes shall be documented in the medical record, including improvement in pain relief and function or simply in pain relief. Limitations and side effects of chronic opioid therapy shall be documented in the medical record.

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18VAC90-70-210. Opioid therapy for chronic pain.

A. The practitioner shall review the course of pain treatment and any new information about the etiology of the pain or the patient's state of health at least every three months.

B. Continuation of treatment with opioids shall be supported by documentation of continued benefit from the prescribing. If the patient's progress is unsatisfactory, the practitioner shall assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.

C. Practitioners shall check the Prescription Monitoring Program at least every three months after the initiation of treatment.

D. The practitioner shall order and review a urine drug screen or serum medication levels at the initiation of chronic pain management and thereafter randomly at the discretion of the practitioner but at least once a year.

E. The practitioner shall regularly evaluate for opioid use disorder and shall initiate specific treatment for opioid use disorder, consult with an appropriate health care provider, or refer the patient for evaluation for treatment if indicated.

18VAC90-70-220. Additional consultation.

A. When necessary to achieve treatment goals, the prescriber shall refer the patient for additional evaluation and treatment.

B. When a practitioner makes the diagnosis of opioid use disorder, treatment for opioid use disorder shall be initiated or the patient shall be referred for evaluation and treatment.

18VAC90-70-230. Medical records.

The prescriber shall keep current, accurate, and complete records in an accessible manner and readily available for review to include:

1. The medical history and physical examination;
2. Past medical history;
3. Applicable records from prior treatment providers or any documentation of attempts to obtain those records;
4. Diagnostic, therapeutic, and laboratory results;
5. Evaluations and consultations;
6. Treatment goals;
7. Discussion of risks and benefits;
8. Informed consent and agreement for treatment;
9. Treatments;
10. Medications, including date, type, dosage and quantity prescribed, and refills;
11. Patient instructions; and
12. Periodic reviews.

Part VII **Disciplinary Provisions**

18VAC90-70-240. Grounds for disciplinary action against the license of a certified midwife.

The boards may deny licensure or relicensure, revoke or suspend the license, or place on probation, censure, reprimand, or impose a monetary penalty on a licensed certified midwife for the following unprofessional conduct:

1. Has had licensure to practice midwifery in this Commonwealth or in another jurisdiction revoked or suspended or otherwise disciplined;
2. Has directly or indirectly held himself out or represented himself to the public as a physician or is able to, or will practice independently of a physician;
3. Has performed procedures or techniques that are outside the scope of practice as a licensed certified midwife and for which the licensed certified midwife is not trained and individually competent;
4. Has violated or cooperated in the violation of the laws or regulations governing the practice of medicine, nursing, or certified midwifery;
5. Has become unable to practice with reasonable skill and safety as the result of physical or mental illness or the excessive use of alcohol, drugs, narcotics, chemicals, or any other type of material;
6. Has violated or cooperated with others in violating or attempting to violate any law or regulation, state or federal, relating to the possession, use, dispensing, administration, or distribution of drugs;
7. Has failed to comply with continuing competency requirements as set forth in 18VAC90-70-90;
8. Has willfully or negligently breached the confidentiality between a practitioner and a patient. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful;
9. Has engaged in unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program; or
10. Has practiced as a licensed certified midwife during a time when the practitioner's certification as a certified midwife by the American Midwifery Certification Board has lapsed.

18VAC90-70-250. Hearings.

A. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern proceedings on questions of violation of 18VAC90-70-240.

B. The Committee of the Joint Boards of Nursing and Medicine shall conduct all proceedings prescribed in this chapter and shall take action on behalf of the boards.

18VAC90-70-260. Delegation of proceedings.

A. Decision to delegate. In accordance with subdivision 10 of § 54.1-2400 of the Code of Virginia, the committee may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a licensed certified midwife may be subject to a disciplinary action.

B. Criteria for delegation. Cases that involve intentional or negligent conduct that caused serious injury or harm to a patient may not be delegated to an agency subordinate, except as may be approved by the chair of the committee.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the committee to conduct an informal fact-finding proceeding may include current or past board members, professional staff, or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The Executive Director of the Board of Nursing shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The committee may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

DOCUMENTS INCORPORATED BY REFERENCE (18VAC90-70)

[Standards for the Practice of Midwifery, revised 2011, American College of Nurse-Midwives](#)

VA.R. Doc. No. R22-7056; Filed April 25, 2023, 6:01 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20VAC5-430. Rules Governing Designation of a Commercial Mobile Radio or Cellular

Telephone Service Provider as an Eligible Telecommunications Carrier (adding 20VAC5-430-10 through 20VAC5-430-100).

Statutory Authority: §§ 12.1-13 and 56-479.4 of the Code of Virginia.

Effective Date: May 22, 2023.

Agency Contact: Mike Cizenski, Deputy Director, Public Utilities Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

Summary:

Pursuant to Chapter 436 of the 2022 Acts of Assembly, the new chapter establishes rules to govern the designation of a commercial mobile or cellular telephone service provider as an eligible telecommunications carrier for purposes of providing Lifeline services, including (i) filing requirements for an applicant requesting that the State Corporation Commission (commission) designate the applicant as an eligible telecommunications carrier in accordance with § 56-479.4 of the Code of Virginia and applicable federal statutes and regulations; and (ii) ongoing requirements for any entity designated as an eligible telecommunications carrier by the commission. Changes to the proposed regulation are clarifying of provisions.

AT RICHMOND, APRIL 27, 2023

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2022-00107

Ex Parte: In the matter of establishing rules governing the designation of a commercial mobile or cellular telephone service provider as an eligible telecommunications carrier for purposes of providing Lifeline services

ORDER ADOPTING RULES

On July 27, 2022, the State Corporation Commission ("Commission") initiated a proceeding to consider establishing rules to govern the designation of a commercial mobile or cellular telephone service provider as an eligible telecommunications carrier for purposes of providing Lifeline services. During its 2022 Session, the Virginia General Assembly enacted Chapter 436 of the Acts of Assembly, which states:

The State Corporation Commission may designate any commercial mobile radio or cellular telephone service provider as an eligible telecommunications carrier for purposes of providing Lifeline service, in addition to any commercial mobile radio or cellular telephone service providers designated as such pursuant to 47 U.S.C. §§ 214(e) and (e)(2), without requiring any such provider to obtain a certificate pursuant to the provisions of § 56-265.4:4. The Commission is authorized

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to promulgate all rules and regulations necessary to implement the provisions of this act.

To facilitate the determination of what rules and regulations would be necessary to implement the provisions of Chapter 436 of the 2022 Acts of Assembly, the Commission ordered that proposed rules ("Proposed Rules") prepared by the Staff of the Commission ("Staff") be published for public review, and that interested persons should be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules.

Staff filed proof of the newspaper publication ordered by the Commission on August 23, 2022. The Proposed Rules were published in the Virginia Register of Regulations on August 29, 2022.¹ Comments on the Proposed Rules were filed on September 26, 2022, by Assurance Wireless USA, L.P. ("Assurance"), and Virginia Cable Telecommunications Association ("VCTA"). On September 27, 2022, the comments of the National Lifeline Association ("NLA") were filed.² No one requested that a hearing be held on the Proposed Rules.

On October 24, 2022, Staff filed a Staff Report reviewing the comments received from Assurance, VCTA, and NLA. The Staff Report also described the extent to which these comments led to any recommendations from Staff for modifying the Proposed Rules. Staff's proposed revisions were attached to the Staff Report as Revised Proposed Rules.

NOW THE COMMISSION, upon consideration of the foregoing and of the applicable law, is of the opinion and finds that the Rules Governing Designation of a Commercial Mobile Radio or Cellular Telephone Service Provider as an Eligible Telecommunications Carrier ("ETC Lifeline Wireless Rules"), 20VAC5-430-10 et seq., as set forth in the Appendix to this Order, should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules Governing Designation of a Commercial Mobile Radio or Cellular Telephone Service Provider as an Eligible Telecommunications Carrier, 20 VAC 5-430-10 et seq., as set forth in the Appendix to this Order, are hereby adopted and shall become effective May 22, 2023.

(2) A copy of this Order and the ETC Lifeline Wireless Rules as set forth in the Appendix thereto shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

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

(4) This case is dismissed.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

Eric M. Page, Esquire, and Cody T. Murphey, Esquire, Eckert Seamans Cherin & Mellott, LLC, 919 East Main Street, Suite 1300, Richmond, Virginia 23219, epage@eckertseamans.com, cmurphey@eckertseamans.com; Peter E. Broadbent, Jr., Esquire, Timothy G. McCormick, Esquire, and Dannieka N. McLean, Esquire, Christian & Barton, LLP, 901 East Cary Street, Suite 1800, Richmond, Virginia 23219; pbroadbent@cblaw.com, tmccormick@cblaw.com, dmclean@cblaw.com; John J. Heitmann, Esquire, Joshua Guyan, Esquire, Debra McGuire Mercer, Esquire, and Alex Espinoza, Esquire, Nelson Mullins Riley & Scarborough LLP, 101 Constitution Avenue N.W., Suite 900, Washington, DC 20001, john.heitmann@nelsonmullins.com, joshua.guyan@nelsonmullins.com, debra.mercer@nelsonmullins.com, alex.espinoza@nelsonmullins.com; and C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424, mbrowder@oag.state.va.us.

¹39 Va. Regs. Reg. 18 (Aug. 29, 2022).

²NLA's Comments were filed electronically on September 26, 2022, after 5 p.m., and so, are considered filed on the next business day.

Chapter 430

Rules Governing Designation of a Commercial Mobile Radio or Cellular Telephone Service Provider as an Eligible Telecommunications Carrier

20VAC5-430-10. Definitions.

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

["Applicant" means a provider of commercial mobile radio or cellular telephone services seeking ETC designation for purposes of providing Lifeline service pursuant to § 56-479.4 of the Code of Virginia.]

"Broadband Internet access service" means a mass-market retail service by [~~wire or~~] radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

"Commission" means the State Corporation Commission.

"Duplicative support" means a Lifeline subscriber is receiving two or more Lifeline services concurrently or two or more subscribers in a household are receiving Lifeline services or Tribal Link Up support concurrently.

"ETC" means eligible telecommunications carrier [that is, a common carrier so designated by the commission in accordance with 47 USC § 214; associated regulations

pursuant thereto (see 47 CFR 54.5 and Part 54, Subpart C); and § 56-479.4 of the Code of Virginia].

"FCC" means Federal Communications Commission.

"Lifeline" means a nontransferable retail service offering provided directly to qualifying low-income consumers as defined in 47 CFR 54.401.

"Lifeline service" means telephony, broadband Internet access service, and other supported services as provided by the FCC through its universal service fund for qualifying low-income customer support pursuant to 47 USC § 214 and associated regulations pursuant thereto (see 47 CFR Part 54, Subpart E).

"National Lifeline Accountability Database" is an electronic system, with associated functions, processes, policies, and procedures, to facilitate the detection and elimination of duplicative support, as directed by the FCC.

"Qualifying low-income consumer" means a consumer who meets the qualifications for Lifeline, as specified in 47 CFR 54.409.

20VAC5-430-20. Filing of application.

A. Unless filed electronically, an original and 15 copies of an application seeking designation as an ETC [pursuant to § 56-479.4 of the Code of Virginia] shall be filed with the Clerk of the Commission.

1. An applicant shall deliver a copy of the application to the Division of Public Utility Regulation at the same time it is filed with the Clerk of the Commission.

2. A copy of all confidential information filed under seal with the Clerk of the Commission in connection with the application shall be provided by the applicant, at the time of filing, to the Division of Public Utility Regulation and the Office of General Counsel pursuant to 5VAC5-20-170.

3. Any amendment or supplement to the application shall be filed in compliance with this section.

B. Notice of the application shall be given to all certificated local exchange carriers and other interested parties in Virginia in a form to be prescribed by the commission pursuant to an order.

20VAC5-430-30. Notice of application.

Pursuant to a commission procedural order, the applicant shall publish notice in newspapers having general circulation throughout its proposed service territory.

20VAC5-430-40. Application requirements.

A. An applicant shall submit information that identifies the applicant, including (i) its name, address, and telephone number; (ii) its corporate ownership; (iii) the name, address, and telephone number of its corporate parent, if any; (iv) a list of its officers and directors, or if the applicant is not a

corporation, a list of its principals and their directors; (v) the names, addresses, and telephone numbers of its legal counsel; and (vi) the name, address, telephone number, fax number, and email address of the primary in-house regulatory contact, designated to receive all official mailings or notices from the commission or staff. An update of any information for the ETC's primary in-house regulatory contact shall be provided to the commission staff within 30 days of any change.

B. An applicant shall [~~attest~~ certify] that it will meet the requirements set forth in 47 USC § 214 (e)(1)(A) and (B) and 47 CFR Part 54, for designation as an ETC to be eligible to receive federal universal service fund support for Lifeline service provided to qualifying low-income customers in Virginia. All ETCs shall comply with federal requirements except to the extent the FCC has granted a waiver of its rules and regulations. All ETCs shall comply with this chapter except to the extent any waiver is granted pursuant to 20VAC5-430-100.

C. An applicant shall [~~attest~~ certify] that it will maintain current terms, conditions, and rates applicable to its Lifeline service in a link to its service guide posted on its website and shall provide to the commission said link with its application. An ETC shall provide the commission staff an update [~~upon~~ within 30 days of] a change to an ETC's web address affecting said link.

D. An applicant shall provide a statement that it will query the National Lifeline Accountability Database to determine whether prospective subscribers are currently receiving a Lifeline service from another [~~ETC service provider~~] and whether anyone else living at the prospective subscriber's residential address is currently receiving a Lifeline service.

E. An applicant shall [~~attest~~ demonstrate] that it will satisfy applicable consumer protection and service standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

F. An applicant shall demonstrate that it is authorized to [~~do~~ conduct or transact] business in the Commonwealth of Virginia by providing the following:

1. In the case of an entity formed under the laws of Virginia: (i) a true and correct copy of its articles of organization or incorporation, certificate of limited partnership, or other organizational documents, and all amendments thereto; and (ii) a copy of the certificate and order issued by the commission.

2. In the case of an entity formed under the laws of a jurisdiction other than Virginia: (i) a copy of the certificate or statement of registration to [~~do~~ conduct or transact] business in Virginia issued to it by the commission; and (ii) a true and correct copy of its articles of organization,

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certificate of limited partnership, or other organizational documents, and all amendments thereto.

G. An applicant shall be required to show that it is financially and technically capable of providing **the** supported Lifeline service.

1. To demonstrate financial ability, an applicant shall, at a minimum, provide **the** per books balance sheet, income statement, and statement of changes in financial position of [~~an~~ **the**] applicant or **the** entity responsible for **the** financing of [~~an~~ **the**] applicant, for **the** two most recent annual periods. Audited financial statements shall be provided, if available, including notes to **the** financial statements and [~~an~~] auditor's letter. Published financial information that includes Securities and Exchange Commission forms 10K and 10Q shall be provided, if available.

2. An applicant shall demonstrate that it is technically capable of providing **the** supported Lifeline service by, at a minimum, providing **the** following information:

- a. A description of **the** applicant's or **the** applicant's parent's history and experience of providing wireless telecommunications or other relevant services, if any; and
- b. **The** managerial and technical experience of each principal officer or member and appropriate senior management and technical personnel.

3. An applicant shall provide a list of **the** [states jurisdictions] where **the** applicant, parent, or any affiliate is designated as an [ETC eligible telecommunications carrier], including **the** date service was commenced for each.

4. An applicant shall [~~also~~] provide a list of any [state jurisdictions] where an [ETC eligible telecommunications carrier] designation was previously held or Lifeline service was provided and subsequently discontinued, and **the** applicable dates.

5. An applicant shall provide a list of **the** [states jurisdictions] where **the** applicant, parent, or any affiliate has had its [ETC eligible telecommunications carrier] designation or authorization denied, suspended, terminated, or revoked. **The** list shall include **the** reason for such denial, suspension, termination, or revocation and copies of any orders issued by a state commission or regulatory authority addressing such action.

6. [~~A description of~~ An applicant shall state] whether **the** applicant intends to offer **the** Lifeline service [~~over~~ using] its own facilities, by resale of another carrier's facilities or services, or through a combination of its own facilities and resale of third-party facilities or services.

7. A provider of wireless telecommunication service [~~who seeks~~ seeking] designation as an ETC that does not own facilities must [~~affirm~~ certify] in its application that it:

a. Provides qualifying low-income subscribers access to emergency 911 service and enhanced 911 service, regardless of activation status and availability of minutes;

b. Provides qualifying low-income subscribers handsets that are capable of providing access to enhanced 911 service and replaces at no additional charge any handset that is not capable of providing access to enhanced 911 service; and

c. If required, has a plan for compliance which has been approved by **the** Wireline Competition Bureau of **the** FCC [in accordance with **the** FCC's grant of forbearance from enforcement of **the** 47 USC § 214 facilities requirement to carriers seeking Lifeline-only ETC designation].

8. An applicant shall [~~attest~~ certify] that it will comply with **the** requirements set forth in 47 CFR 54.404.

9. An applicant shall [~~affirm~~ certify] its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

H. A copy of **the** compliance plan submitted to and approved by **the** requisite FCC bureau shall be included with any application for ETC designation filed by an entity providing wireless service on a purely resale basis.

I. An applicant must comply with **the** Lifeline minimum service standards detailed at 47 CFR 54.408 [, or as set or waived by **the** FCC, or **the** FCC's bureaus, by designated authority].

20VAC5-430-50. Complaints.

Each ETC shall designate a point of contact for **the** handling of customer complaints received by **the** commission. When contacted by a member of **the** commission staff regarding a customer complaint received by **the** commission, **the** ETC shall provide **the** commission staff a written response within 24 hours confirming contact with **the** customer and describing **the** plan for addressing **the** customer's complaint. **The** ETC shall provide commission staff a written confirmation when **the** customer complaint is resolved.

20VAC5-430-60. Reports to **the State Corporation Commission.**

A. Each ETC shall retain a listing of all of **the** service areas within Virginia in which **the** ETC has provided Lifeline service during **the** preceding 12 months and shall provide such to **the** commission staff upon request.

B. Each ETC shall promptly furnish such other information as **the** commission staff may reasonably request, unless otherwise ordered by **the** commission.

C. Within 30 days of [~~submission~~ an ETC's annual reporting of information] to the FCC [required pursuant to 47 CFR 54.422,] each ETC shall submit [a copy of its annual report ~~to~~] to the commission staff [a copy of said report].

[~~D. Each ETC shall provide to the commission the annual notarized affidavit required to be filed to support the commission's designation of the use of federal universal service funds as required by 47 USC § 254(e).~~]

20VAC5-430-70. Customer notice requirements.

An applicant shall include in its application, a copy of the rates, terms, and conditions, or weblink thereto, that describes to current and potential customers how notice of any change to rates, terms, and conditions of any aspect of the supported Lifeline service will be provided, including the amount of prior notice any customer will be entitled to before said change is put into effect. The notice to customers shall afford an adequate amount of time for the customer to select another [service] provider before said change is put into effect [but shall not be less than 14 days].

20VAC5-430-80. Suspension [~~of~~ or] revocation of ETC designation.

A. No carrier shall [unreasonably] discriminate among subscribers requesting service. Any finding of discrimination may be grounds for suspension or revocation of the ETC designation of public convenience and necessity granted by the commission.

B. Excessive subscriber complaints against a wireless ETC that the commission has found to [~~be meritorious~~ not have been addressed and resolved satisfactorily] may be grounds for suspension or revocation of the carrier's ETC designation.

C. In all proceedings pursuant to this section, the commission shall give notice to the carrier of the allegations made against it and provide the ETC with an opportunity to be heard concerning those allegations prior to [the any] suspension or revocation of the ETC designation.

20VAC5-430-90. Abandonment or discontinuation of service.

[~~No~~ To the extent not otherwise governed by 47 USC 214(e)(4) and 47 CFR 54.505, no [~~wireless~~ ETC shall [~~otherwise~~] abandon or discontinue [Lifeline] service, or any part of [service services] established, unless it provides [at least seven days'] advance notice to the commission, which shall include a description of the notice to be provided to customers that ensures adequate time to find another service provider [, or at least 30 days' notice].

20VAC5-430-100. Commission authority.

A. The commission may, at its discretion, waive or grant exceptions to any provisions of this chapter.

[B. This chapter shall be enforced by the commission pursuant to the authority provided under §§ 12.1-13 and 12.1-33 of the Code of Virginia.]

V.A.R. Doc. No. R23-7312; Filed April 27, 2023, 3:09 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Final Regulation

Title of Regulation: **24VAC35-80. Alcohol Safety Action Program Regulation (adding 24VAC35-80-10 through 24VAC35-80-140).**

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

Effective Date: June 21, 2023.

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

Summary:

The action adds a new regulatory chapter titled Alcohol Safety Action Program Regulation (24VAC35-80), which includes (i) definitions; (ii) authorization for the Commission on the Virginia Alcohol Safety Action Program (VASAP) to suspend certain requirements if a federal or state disaster or emergency is declared; (iii) requirements for Alcohol Safety Action Program (ASAP) staffing and accessibility to the public; (iv) various requirements regarding ASAP budgets, unexpended revenues, financial reporting and audits, case management process and procedures, privacy and security procedures, personnel policies, and employee certification; (v) a requirement that ASAPs be certified every three years; (vi) authorization for the Commission on the VASAP to certify, decertify, regionalize, reorganize, and merge local ASAPs; (vii) procedures if an ASAP is found to be out of compliance and actions that would lead to a suspension or revocation of certification; and (viii) requirements for staff certification, including the actions that could lead to the suspension or revocation of certification.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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Chapter 80 Alcohol Safety Action Program Regulation

24VAC35-80-10. Definitions.

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

"ASAP" means an alcohol safety action program established by the commission or any county, city, town, or any combination thereof, as provided in § 18.2-271.1 of the Code of Virginia, for the purposes of providing probation, education, and rehabilitation services for individuals referred to the program by the court, the DMV, or any other commission-approved referral source.

"ASAP Code of Conduct" means a standard of ethics for all ASAP employees.

"ASAP director" means the person who provides supervisory, managerial, or oversight of an alcohol safety action program.

"Budget" means a written financial plan for expenditures of a program for a given period of time that is subject to approval by the commission.

"Case Management Operational Guidelines" means a manual, created by the commission, establishing case management policy and procedure guidelines.

"Certification" means the process of certifying ASAPs as set forth in the Commission on VASAP Certification Manual or the process for certifying ASAP employees to provide ASAP services in the Commonwealth of Virginia and to ASAP offenders residing out of state.

"Commission" means the Commission on Virginia Alcohol Safety Action Program or its designee.

"Commission on VASAP Certification Manual" means The Commission on the VASAP Certification Manual, version January 3, 2023, a manual required by § 18.2-271.2 of the Code of Virginia to be created by the commission, which evaluates an ASAP for its organization management, fiscal standing, and overall operation.

"DMV" means the Virginia Department of Motor Vehicles.

"Executive director" means the executive director of the commission.

"Executive finance committee" means the advisory subcommittee of the commission composed of the executive director of the commission, two commission members, and such other persons as the commission may designate.

"Policy board" means an ASAP policy board that is advisory in nature, chosen and operated in accordance with procedures promulgated by the commission.

"Regional leadership team" means a regional team, established by the executive director, charged with assisting

ASAPs in achieving and maintaining commission certification requirements.

"Revenues" means any fee due to or collected by an ASAP for services provided by the ASAP.

"Target collection rate" means a rate of collection by an ASAP of offender fees in any given time period equal to or greater than 90% of offender fees owed to the program for services provided during the same given time period. The given time period shall be established by the commission.

"VASAP" means the Virginia Alcohol Safety Action Program.

"VASAP Certification Exam" is a commission-created certification exam that is administered by the commission to ASAP employees and is part of the application process for individuals seeking a VASAP Certification Letter to perform ASAP services in the Commonwealth of Virginia and for ASAP offenders residing out of state. Successful completion of the exam requires a score of 80% or higher.

"VASAP Certification Letter" means a certification letter issued by the commission to any eligible ASAP employee authorizing the employee to perform ASAP-related duties in the Commonwealth of Virginia. ASAP-related duties include management of cases, administrative functions, courtroom testimony, supervision of employees, program management, or any other duty determined by the commission. The letter shall be issued in a format and method determined by the commission.

24VAC35-80-20. [Reserved].

24VAC35-80-30. Emergency declarations.

The commission reserves the right to suspend service-related requirements of this chapter in applicable geographical areas when there exists a federal or state disaster or declaration of emergency.

24VAC35-80-40. Alcohol safety action program administrative structure and accessibility.

A. Alcohol safety action programs shall consist of, at a minimum, an ASAP director, staff deemed necessary by the commission, and the local policy board to efficiently accomplish all duties of the program.

B. ASAPs shall be accessible to the public for all ASAP-related services during days and times established by the commission. The commission shall determine the method of accessibility.

C. ASAPs that incur a pattern of verified sub-standard customer service complaints resulting in the use of commission resources, including rental vehicle expenses, fuel, labor hours, and office supplies, may be billed by the commission for any of the aforementioned accrued expenses in their entirety. ASAPs that are billed by the commission for reimbursement

under this section shall remit a payment to the commission within 30 days of the date of the invoice sent by the commission to the ASAP unless otherwise approved by the executive director.

24VAC35-80-50. Alcohol safety action program policy boards.

A. Each ASAP shall operate under the direction of a local independent policy board, advisory in nature, chosen in accordance with procedures approved and promulgated by the commission.

B. The policy board shall consist of five to 15 members. The governing bodies of each participating jurisdiction shall appoint one member for a term of three years. The remaining members shall be elected for a term of three years by majority vote of those members selected by each represented locality unless these appointments are the first appointments to the policy board.

C. Upon initial appointment of a policy board, one-third of the members shall be appointed for one year, one-third of the members shall be appointed for two years, and one-third of the members shall be appointed for three years. ASAP employees shall not serve as a member of the board outside of an ex officio capacity.

D. The policy board members not appointed by the governing bodies of represented jurisdictions, at the discretion of the board, shall be selected from the Bar Association, law enforcement, and education and treatment professionals, at a minimum.

E. The designated terms of office for each member may be modified if approved by the commission.

F. Policy board vacancies shall be filled by a majority vote of the remaining board members from the nomination of other board members and the participating governing bodies of the jurisdiction.

G. Policy board members shall be selected by the commission in situations where the locality cannot agree on board member selections.

H. The officers of the policy board shall consist of a chairperson and such subordinate officers as the board may elect or appoint. Each policy board (i) shall include at least one Commonwealth attorney member, a defense attorney member who practices DUI law, a law-enforcement member, and a behavioral health member and (ii) may appoint a local sitting or retired District Court judge who regularly hears or heard cases involving driving under the influence and is familiar with local alcohol safety action programs. Members shall serve without compensation. The offices of the chairperson, and vice-chairperson if one is elected, shall be held by members from different participating jurisdictions. The policy board chair is subject to final confirmation approval by the executive director. Individuals serving in a policy board chair capacity

prior to [(insert the effective date of this regulation) June 21, 2023,] shall apply to the executive director for approval to remain in their current position within 30 days of [(insert the effective date of this regulation) June 21, 2023].

I. Excluding the original officers, who shall be elected at the second meeting after the formation of the board, each officer shall be elected at the annual meeting of the board to serve a term of three years. Terms of office shall not be modified without commission approval. Vacancies occurring in any office shall be filled by the board for the unexpired term.

J. Election of officers requires that a majority of policy board members be present and voting in order to be valid. Members who are unable to attend may vote in any election by letter directed to the chairman and delivered prior to, or at, the meeting. At the regular meeting of the policy board immediately preceding the annual meeting, the chairman shall appoint a nominating committee, which shall present to the board at its annual meeting a slate of nominees for election as officers and a slate of nominees to fill any board vacancies. All board members and officers shall take office on the first day of the month following their election and shall serve until their successors take office. No officer shall serve more than two consecutive terms in office.

K. The annual meeting of the board is that meeting so designated in the bylaws for the purpose of electing officers and filling expired member terms and shall be open to the public.

L. Regular meeting of the board shall be held quarterly. Special meetings may be called at the policy board's pleasure. The policy board is required to provide notice to the public of all meetings as required by state and federal Freedom of Information Act laws.

M. The policy board or its executive committee may go into executive session when legally appropriate.

N. Policy board meetings shall adhere to state and federal Freedom of Information Act laws.

O. The policy board may change the date and time of any regular meeting at any prior meeting and may adjourn any meeting to another place if notice of the change is provided in adherence to state and federal Freedom of Information Act laws.

P. Two-thirds attendance of the policy board membership shall constitute a quorum for any policy board meeting.

Q. The commission may merge or regionalize a policy board in instances where the commission is merging or regionalizing the ASAP in which the policy board provides oversight.

24VAC35-80-60. Alcohol safety action program revenues.

The commission shall be empowered to collect unexpended revenue from local ASAPs in the commission's duties to establish and ensure the maintenance of minimum standards

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and criteria for program operations and performance, accounting, auditing, public information, and administrative procedures for the various alcohol safety action programs and oversight of the administration of the local statewide VASAP system. In instances where the commission intends to collect unexpended revenue from a local ASAP, the commission shall provide the local ASAP a 30-day notice of the amount of unexpended revenue to be collected and the date of collection by the commission. Once notice of the collection amount and date is given to the local ASAP by the commission, the local ASAP shall release the total amount of the unexpended revenue cited by the commission to the commission within 15 calendar days of the collection date provided by the commission. The payment method shall be established by the commission.

24VAC35-80-70. Alcohol safety action program audits and financial records.

A. Financial records shall be subject to local, state, and federal audits and shall be maintained in an orderly fashion using generally accepted accounting principles and shall be retained per the Library of Virginia retention schedule.

B. An annual income statement shall be submitted to the commission by August 1 of each calendar year.

C. Monthly financial reports shall be submitted to the commission by the 15th calendar day of the following month. ASAPs that fail to send in their monthly financial report by the 15th calendar day of the following month shall pay the following daily late fees to the commission, unless otherwise approved by the commission:

1. \$25 daily late fee for the first five calendar days in which the monthly financial report is not received by the commission; and
2. \$100 daily late fee for any calendar days after the first five days in which the monthly financial report is not received by the commission.

ASAPs that are more than 15 calendar days late in submitting the prior month's financial report may be decertified by the commission.

D. All ASAP financial reports, to include monthly financial reports, budgets, or any other financial report required by the commission, shall be submitted to the commission via a method established by the commission.

24VAC35-80-80. Alcohol safety action program budgets and requests for allocation of commission funds.

A. ASAPs are required to submit annual budgets to the commission via a method approved by the commission by May 1 of each calendar year for approval by the commission. Submitted budgets shall include all information required by the commission along with the prior year's collection rate. Budgets submitted by local programs with collection rates below the

target collection rate are subject to a reduction in the approved budget amount by a percentage equal to the target collection rate minus the actual collection rate.

B. The commission may reduce the approved budget amount for any ASAP budget by the total salary amount of any employee included in the budget who does not possess a valid VASAP Certification Letter or for any delinquent ASAP administrative fees owed to the commission.

C. ASAPs may use a local political subdivision as a fiscal agent if approved by the commission. Any desired change in fiscal agent by an ASAP shall be submitted to the executive director for approval at least 60 days prior to the desired date of change.

D. In instances where an unforeseen circumstance occurs, which requires a budget amendment, the ASAP may submit the budget amendment to the commission clearly identifying the circumstances and the dollar amount of the budget amendment change requested. The commission shall respond to the ASAP on the approval status of the budget amendment within 30 calendar days.

E. In instances where an ASAP is requesting an allocation of commission funds, the ASAP is required to submit a commission-approved application detailing the reason for the allocation of commission funds request along with other commission-requested financial information. ASAPs that own buildings that possess a collection rate below the target collection rate or possess the financial means to fund operations more than six months into the future, factoring in a zero-revenue sum over the same period of time, are ineligible to apply for an allocation of commission funds from the commission. ASAP requests to the commission for an allocation of commission funds are subject to commission approval. ASAPs that receive substantial financial contributions from their localities and have received these contributions for a substantial period of time prior to their request for an allocation of commission funds, may be eligible for an allocation of commission funds if approved by the commission. Substantial financial contributions and substantial period of time shall be determined by the commission.

24VAC35-80-90. Alcohol Safety Action Program certification.

A. The commission shall be empowered to certify, decertify, regionalize, reorganize, or merge local ASAPs, including their finances and personnel, to establish and ensure the maintenance of minimum standards and criteria for program operations and performance, accounting, auditing, public information, and administrative procedures for the various local ASAPs and shall be responsible for overseeing the administration of the statewide VASAP system.

B. ASAPs shall adhere to the certification process and procedures for certifying ASAPs as established in the

Commission on VASAP Certification Manual and maintain the required certification standards of the commission at all times.

C. ASAPs shall be certified, at a minimum, at least every three years.

D. If an ASAP is found out of compliance during certification, the ASAP shall complete an action plan within 10 days of notice of any compliance issue citing the procedures to be implemented to attain compliance. The commission shall conduct a secondary review to validate the corrective action has occurred and make a recommendation for certification if the ASAP has resolved all outstanding noncompliance issues in a satisfactory manner. If noncompliance issues remain, the ASAP's conditional certification may be extended or their full certification may be revoked by the commission.

E. An ASAP may submit a waiver in writing to the commission of certification standards that are impacted directly by staffing issues or emergency declarations. An exemption may be granted from a specific ASAP certification requirement or any part thereof by the executive director.

F. The executive director may at the executive director's discretion establish or conclude a regional leadership team to assist ASAPs in achieving and maintaining commission certification standards. The executive director shall establish the members, duties, process, and procedures of the regional leadership team.

G. ASAPs that fail to meet certification standards set forth in the Commission on VASAP Certification Manual may be conditionally certified by the commission permitting the ASAP to continue to receive referrals from the courts and provide services for DMV administrative cases.

24VAC35-80-100. Suspension or revocation of certification of an Alcohol Safety Action Program.

A. The executive finance committee, for a period not to exceed 90 days, may suspend certification of an ASAP for the following reasons, including:

1. When an ASAP knowingly violates any state or federal law;
2. When an ASAP violates any requirements of the Commission on VASAP [~~certification manual~~ Certification Manual];
3. When an ASAP abuses access to the DMV system or any system created or co-created by the commission and provided to the ASAPs by the commission for use;
4. When an ASAP consistently fails to adhere to the case management operational guidelines;
5. When an ASAP violates law or commits an unethical act that negatively impacts the integrity of the state VASAP system;

6. When there is a pattern of ASAP noncompliance or customer service issues;

7. When the ASAP or an ASAP's policy board impedes, interrupts, disrupts, or negatively impacts an investigation conducted by the commission of the ASAP related to customer service issues, a violation of law, financial discrepancies of any form, unethical acts or any complaint brought forward by a third party;

8. When an ASAP attempts to conceal any source of income or financial assets owned by or in control of in whole or in part by the ASAP;

9. When an ASAP uses a treatment service provider that is not on the state approved treatment provider list without prior approval from the commission;

10. When an ASAP fails to cooperate, in any way, with the regional leadership team; or

11. When an ASAP fails to abide by the recommendations of the regional leadership team.

B. If a suspension of an ASAP occurs by the executive finance committee, the executive director may:

1. Prohibit the suspended ASAP from receiving any court referrals or from providing services for DMV administrative cases during the suspension period.
2. Eliminate ASAP access to the DMV system or any system created or co-created by the commission and provided to the ASAP by the commission for use.

C. In cases where the certification of an ASAP is suspended, the ASAP shall continue to provide services for all referrals received prior to the suspension date unless otherwise desired by the commission. The ASAP will not be permitted to receive referrals from the court or provide services for DMV administrative cases during the period of suspension unless otherwise approved by the commission.

D. In cases where an ASAP decides to dissolve on its own accord, the ASAP shall continue to provide services for all referrals received up until the date the ASAP communicates to the commission its intent to dissolve. The ASAP shall continue services for these referrals until all referrals are completed in a satisfactory manner as determined by the commission.

E. ASAPs that fail to meet the certification standards set forth in the Commission on VASAP Certification Manual and are not conditionally certified by the commission pursuant to 24VAC35-80-90 G shall have their certification revoked and shall be prohibited from receiving referrals for service from any court or providing services for DMV administrative cases indefinitely unless otherwise approved by the commission. If the certification of an ASAP is revoked, the ASAP shall be responsible for the continued monitoring of referrals received and all duties normally entailed prior to the revocation of certification until all referrals are properly managed and

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permanently closed, unless otherwise approved by the commission.

24VAC35-80-110. Alcohol Safety Action Program case management processes and procedures.

ASAP employees will find processes and procedures for case management, which are important to successful ASAP certification, via the Case Management Policy and Procedure Guidelines established by the commission. ASAP employees shall attend any commission-provided training via a method approved by the commission.

24VAC35-80-120. Alcohol Safety Action Program privacy and security procedures.

A. ASAPs shall maintain and handle all offender records and all other confidential information as required by federal, state, and local guidelines and laws.

B. ASAPs shall maintain all offender case files via the applicable Library of Virginia retention schedule.

24VAC35-80-130. Alcohol Safety Action Program personnel policies.

A. Each ASAP employee will be provided the ASAP Code of Conduct.

B. ASAP employees, serving in any type of supervisory capacity, shall not supervise any employee, directly or indirectly, who is a spouse, partner, family member, or household member or a party deemed as a conflict of interest by the commission. "Family member" or "household member" includes any person who cohabitates with or is related by blood, marriage, or adoption.

C. ASAP directors shall administer in person evaluations for all employees unless otherwise approved by the commission. Employee evaluations shall be:

1. Completed by the ASAP director or an ASAP-designated supervisor on an official commission evaluation form;
2. Completed for each ASAP employee on no less than an annual basis; [and]
3. Signed and dated by both the ASAP director or a supervisor-designee and the ASAP employee who is being evaluated. In situations where an ASAP employee refuses to sign the evaluation, the ASAP director or a supervisor-designee shall write "refused to sign" under the employee signature line. The ASAP director or a supervisor-designee shall initial and date the evaluation.

24VAC35-80-140. Alcohol Safety Action Program employee certification, revocation, or suspension.

A. All ASAP employees are required to possess a VASAP Certification Letter in order to perform any ASAP services in the Commonwealth of Virginia, including servicing ASAP offenders with an ASAP requirement that may reside out of

state. Newly hired employees, however, may perform ASAP services for training purposes up to 90 days prior to obtaining a VASAP Certification Letter. In order to apply for a VASAP Certification Letter, the ASAP shall submit a completed application to the commission for approval for any ASAP employee not in possession of a VASAP Certification Letter, excluding an ASAP employee who is newly hired and within the first 90 days of training. The completed application shall include submission to the commission of:

1. A complete local and national criminal history;
2. A complete driver's record; and
3. Successful completion of the VASAP Certification Exam.

Failure to submit a completed application will result in disqualification of the applicant from consideration for a VASAP Certification Letter by the commission to perform ASAP services in the Commonwealth of Virginia or to ASAP offenders who may reside out of state.

B. All applicants shall be required to complete a VASAP Certification Exam. Successful completion of the exam requires a score of 80% or higher. Applicants who fail to successfully complete the VASAP Certification Exam on the first attempt shall be allowed a second opportunity to successfully complete the exam. Applicants who fail to successfully complete the VASAP Certification Exam on the second attempt shall not be allowed to reapply to provide ASAP services for the Commonwealth of Virginia or for ASAP offenders residing out of state for six months from the date of the second failed exam. ASAPs shall be required to pay an administrative fee of \$250 to the commission for each second and subsequent VASAP Certification Exam taken by an employee as the result of a prior failed exam by the same ASAP employee.

C. In addition to the requirements of subsections A and B of this section, ASAP employees who serve in an ASAP director capacity shall be required to successfully complete the following requirements to obtain a VASAP Certification Letter:

1. A minimum of 40 hours of commission-approved training via a format and location determined by the executive director; and
2. Verification of meetings conducted with stakeholders of the assigned ASAP to include all Circuit and General District Court judges along with their clerk of court, Commonwealth attorneys, sheriffs, and police chiefs unless otherwise approved by the commission. Newly hired ASAP directors will be granted a six-month grace period to fulfill this requirement.

D. The executive director may deny, revoke, suspend, or terminate a VASAP Certification Letter for any ASAP employee for any of the following reasons:

1. Having been convicted of a felony;

2. Having been convicted of a misdemeanor potentially punishable by confinement;

3. Committing an unethical, deceptive, or dishonest act that negatively impacts the integrity of the state VASAP system;

4. Failing to demonstrate the ability to consistently comply with ordinances, statutes, administrative rules, or court orders at the local, state, or federal level;

5. Failing to demonstrate sufficient knowledge or skill required to perform ASAP services in the Commonwealth of Virginia or for ASAP offenders residing out of state;

6. Making a material misstatement or omission on the application;

7. Defrauding any client, service provider, or other person or entity in the conduct of the ASAP's business;

8. Unethical behavior. Proper employee conduct is outlined in the ASAP Code of Conduct;

9. Failing to attend any commission-mandated training without prior commission approval;

10. Failing to timely enter ASAP enrollments or completions or ignition interlock installs and completions into the DMV system;

11. Displaying a pattern of substandard customer service;

12. Mismanagement of ASAP finances;

13. Failing to submit reports required by the commission to the commission within the timeframes provided by the commission; or

14. Expending or directing another to expend budgetary funds not approved by the commission.

An ASAP employee whose VASAP Certification Letter has been denied, revoked, suspended, or terminated may request a judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In the event that the decision to suspend the VASAP Certification Letter of an ASAP employee is upheld, the ASAP employee shall not perform any ASAP services in the Commonwealth of Virginia or for ASAP offenders residing out of state for the entire suspension period, or in the case of a denial, revocation, or termination, on a permanent basis. This prohibition includes any period during which the denial, suspension, revocation, or termination is being contested. The ASAP director, or the policy board in the situation where the action pertains to an ASAP director, shall return the VASAP Certification Letter to the commission within 15 days of the date that the certification was suspended, revoked, or terminated by the commission.

E. ASAP directors shall be responsible for any ASAP employee, including themselves, who provides any ASAP services without a valid VASAP Certification Letter,

excluding a new employee who is within the first 90 days of employment, and shall be subject to a fine of up to \$500 per occurrence, to be approved by the executive finance committee, payable to the Treasurer of Virginia. In this instance, the commission will notify the applicable jurisdictions of the violation. If the violation continues, the commission shall review the ASAP's certification at the next commission meeting.

F. Once the completed application has been approved by the commission, and all other qualifications have been met by the applicant, a VASAP Certification Letter to perform ASAP services in the Commonwealth of Virginia and to ASAP offenders residing out of state shall be issued to the applicant in a method approved by the commission. In the event that an applicant is not approved for a VASAP Certification Letter to perform ASAP services in the Commonwealth of Virginia or to ASAP offenders residing out of state, the commission will notify the ASAP employee in writing within 10 days of the determination. The VASAP Certification Letter is subject to review by the commission at its discretion during the course of the certification period.

G. ASAP employees are required to successfully complete 10 hours of commission-approved continuing education on an annual basis in order for their certification to perform ASAP services in the Commonwealth of Virginia and to ASAP offenders residing out of state to remain valid. ASAP employees who fail to successfully complete 10 hours of commission-approved continuing education on an annual basis shall have their certification suspended by the executive director on the annual expiration date of the certification unless otherwise approved by the executive director. The annual time period to complete the 10 hours of commission-approved continuing education for all ASAP employees is calculated as 365 days from their original certification date and falls on the same date on an annual basis for all subsequent years. The executive director shall determine the parameters required for successful completion and awarding of commission-approved continuing education courses.

H. An ASAP employee who has had state certification denied, revoked, or terminated shall be ineligible to reapply for a VASAP Certification Letter unless otherwise approved by the commission.

I. ASAPs are required to notify the commission in writing of any employee who is no longer an employee of the ASAP within 48 hours of the ASAP employee's employment end date.

J. In addition to the successful completion of the VASAP Certification Exam required for application, the executive director may order that an ASAP employee review requirements and retake the VASAP Certification Exam to demonstrate that the employee possesses the knowledge required to adequately perform ASAP services in the Commonwealth of Virginia and to ASAP offenders residing out of state.

Regulations

K. ASAP employees are permitted to perform ASAP duties without a VASAP Certification Letter for up to [(insert a date six months after the effective date of this regulation) December 21, 2023,] unless otherwise approved by the executive director.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (24VAC35-80)

[Application for Distribution of Commission on VASAP Funds \(filed 1/2023\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (24VAC35-80)

[Commission on the Virginia Alcohol Safety Action Program Certification Manual, effective January 3, 2023](#)

VA.R. Doc. No. R23-7298; Filed May 2, 2023, 1:05 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

VIRGINIA ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Title of Document: [Label Approval of Cross-Over Products.](#)

Public Comment Deadline: June 21, 2023.

Effective Date: July 3, 2023.

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

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Document: [Reporting Peer-on-Peer Aggressions as Potential Neglect.](#)

Public Comment Deadline: June 21, 2023.

Effective Date: June 23, 2023.

Agency Contact: Taneika Goldman, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, 1220 Bank Street, Jefferson Building, 4th Floor, Richmond, VA 23219, telephone (804) 371-0064, or email taneika.goldman@dbhds.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: [Guidance on the Transfer and Disposal of X-ray Equipment.](#)

Public Comment Deadline: June 21, 2023.

Effective Date: June 22, 2023.

Agency Contact: Cameron Rose, Policy Analyst, Virginia Department of Health, 109 Governor Street, Room 733, Richmond, VA 23219, telephone (804) 864-7090, or email cameron.rose@vdh.virginia.gov.

GENERAL NOTICES

COMMISSION ON LOCAL GOVERNMENT

Schedule for the Assessment of State and Federal Mandates on Local Governments

Pursuant to the provisions of §§ 2.2-613 and 15.2-2903 of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by Secretary of Commerce and Trade Caren Merrik and Governor Glenn A. Youngkin, represents the timetable that the listed executive agencies will follow in conducting their assessments of certain state and federal mandates that they administer that are imposed on local governments. Such mandates are new (in effect for at least 24 months), newly identified, or have been significantly altered as to warrant a reassessment of the mandate (and have been in effect for 24 months). In conducting these assessments, agencies will follow the process established by Executive Order 58 (October 11, 2007). These mandates are abstracted in the Catalog of State and Federal Mandates on Local Governments published by the Commission on Local Government.

For further information contact Grace Wheaton, Senior Policy Analyst, Commission on Local Government, email grace.wheaton@dhcd.virginia.gov, telephone (804) 310-3410, or visit the commission's website at www.dhcd.virginia.gov.

STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS

Approved Schedule of Assessment Periods - July 2023 through June 2024

For Executive Agency Assessment of Cataloged Mandates

AGENCY	Catalog Number	Assessment Period
Mandate Short Title		
DEPARTMENT OF CRIMINAL JUSTICE SERVICES		
Waiver Process for Law Enforcement Agencies to use Certain Military Property	SPSHS.DCJS043	1/1/24 - 3/30/24
Professional Standards of Conduct and Decertification of Law Enforcement Officers	SPSHS.DCJS041	1/1/24 - 3/30/24
DEPARTMENT OF CONSERVATION AND RECREATION		
Outdoor Recreation Legacy Partnership Program	SNHR.DCR029	4/1/24 - 6/30/24
Dam Safety, Flood Prevention and Protection Assistance Fund	SNHR.DCR003	4/1/24 - 6/30/24
DEPARTMENT OF ENVIRONMENTAL QUALITY		
Underground Storage Tank	SNR.DEQ019	9/1/23 - 11/30/23
DEPARTMENT OF JUVENILE JUSTICE		
Youth Justice Diversion Programs	SPSHS.DJJ018	9/1/23 - 11/30/23
DEPARTMENT OF EDUCATION		
Teacher License Required	SOE.DOE174	8/1/23 - 10/31/23

General Notices

Self-Assessment and Action Planning for Inclusion Practices	SOE.DOE175	8/1/23 - 10/31/23
Student Achievement and Graduation Requirements	SOE.DOE176	8/1/23 - 10/31/23
Carbon Monoxide Detectors Required	SOE.DOE177	8/1/23 - 10/31/23
Participation in the Afterschool Meal Program	SOE.DOE178	8/1/23 - 10/31/23
Availability of In-person and Virtual Learning to All Students	SOE.DOE179	3/1/24 - 5/31/24
Seizure Management and Action Plans	SOE.DOE180	3/1/24 - 5/31/24
COVID-19 Mitigation Plan on School Board Website	SOE.DOE181	3/1/24 - 5/31/24
Teacher License Required	SOE.DOE004	3/1/24 - 5/31/24
Possession and Self-Administration of Asthma Medications and Epinephrine	SOE.DOE112	3/1/24 - 5/31/24
DEPARTMENT OF ELECTIONS		
Covered Practices and Preclearance Requirements	SOA.ELECT010	8/1/23 - 10/31/23
Electoral Board, Registrar, and Officers of Election	SOA.ELECT002	8/1/23 - 10/31/23
Polling Place and Registration Facilities	SOA.ELECT003	8/1/23 - 10/31/23
Public Notification Requirements for General Registrars	SOA.ELECT007	8/1/23 - 10/31/23
DEPARTMENT OF HEALTH		
Onsite Sewage Systems	SHHR.VDH037	7/1/23 - 9/30/23
DEPARTMENT OF TRANSPORTATION		
Urban Street Maintenance Payments	STO.VDOT011	3/1/24 - 5/31/24
VIRGINIA STATE POLICE		
Community Policing	SPSHS.VSP019	9/1/23 - 9/30/23
Photo Speed Monitoring	SPSHS.VSP020	10/1/23 - 10/31/23
Approved by the Commission on March 10, 2023		

General Notices

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Capehart Homes Inc.

An enforcement action has been proposed for Capehart Homes Inc. for violations of State Water Control Law in Isle of Wight, Virginia. A description of **the** proposed action is available at **the** Department of Environmental Quality (DEQ) office listed or online at www.deq.virginia.gov. DEQ will accept comments from May 22, 2023, through June 21, 2023.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email russell.deppe@deq.virginia.gov.

Proposed Enforcement Action for Foss Recycling of Virginia LLC

An enforcement action has been proposed for Foss Recycling of Virginia LLC for violations of State Water Control Law in Chesapeake, Virginia. A description of **the** proposed action is available at **the** Department of Environmental Quality (DEQ) office listed or online at www.deq.virginia.gov. DEQ will accept comments from May 22, 2023, through June 21, 2023.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, FAX (804) 698-4178, or email russell.deppe@deq.virginia.gov.

Proposed Enforcement Action for Gilmore Environmental Consulting LLC

An enforcement action has been proposed for Gilmore Environmental Consulting LLC for violations of State Water Control Law, regulations, and **the** applicable permit at **the** Fredericksburg Readiness Center metal oxide varistor (MOV) parking lot site located in Fredericksburg, Virginia. **The** proposed consent order is available from **the** Department of Environmental Quality (DEQ) contact or at <https://www.deq.virginia.gov/permits-regulations/public-notices>. **The** DEQ contact will accept written comments from May 23, 2023, through June 22, 2023.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

Proposed Enforcement Action for Greensville County

An enforcement action has been proposed for Greensville County regarding violations of State Water Control Law and regulations at **the** sanitary landfill in Greensville County, Virginia. **The** proposed order is available from **the** Department of Environmental Quality (DEQ) contact or at

<https://www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders>. **The** DEQ contact will accept written comments from May 22, 2023, through June 22, 2023.

Contact Information: Michelle Callahan, Land Enforcement Coordinator and Adjudication Officer, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, or email michelle.callahan@deq.virginia.gov.

Proposed Enforcement Action for Oak Hill Academy

An enforcement action has been proposed for Oak Hill Academy for violations of State Water Control Law and regulations at **the** Oak Hill Academy sewage treatment plant in Grayson County, Virginia. **The** Department of Environmental Quality (DEQ) proposes to issue a consent order to resolve violations associated with **the** facility. A description of **the** proposed action is available at **the** DEQ office listed or online at www.deq.virginia.gov. **The** staff contact person will accept comments by email or postal mail from May 22, 2023, through June 21, 2023.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

Michaux Solar Center LLC Withdrawal of Notice of Intent for Small Renewable Energy Project (Solar) - Pittsylvania and Henry Counties

Michaux Solar LLC has withdrawn its notice of intent to submit **the** necessary documentation for a permit by rule for a small renewable energy project (solar) in Pittsylvania and Henry Counties. **The** original notice of intent was published in Volume 37, Issue 18 of **the** Virginia Register on April 26, 2021.

Contact Information: Susan Tripp, Small Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 664-3470, FAX (804) 698-4178.

Sunny Rock Solar Project Notice of Intent for Small Renewable Energy Project (Solar) - Henry County

Sunny Rock Solar LLC has provided **the** Department of Environmental Quality a notice of intent to submit **the** necessary documents for a permit by rule for a small renewable energy project (solar) in Martinsville, Virginia within Henry County. Latitude and longitude coordinates are 36.610142, -79.886161.

The proposed project is a 20-megawatt alternating current photovoltaic ground-mounted solar facility. **The** area comprising **the** project area is approximately 180 acres. **The** project will include approximately 55,000 solar panels.

Contact Information: Amber Foster, Small Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Pharmacy Provider Manual Appendices D and E Available for Review and Comment

The Pharmacy Provider Manual Appendices D and E are now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/> for public comment until June 1, 2023.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

BOARD OF WILDLIFE RESOURCES

Announcement of Public Hearing and Opportunity for Public Comment

The Virginia Board of Wildlife Resources, pursuant to §§ 29.1-103, 29.1-501, 29.1-701, and 29.1-735 of the Code of Virginia, announces opportunity for public comment on the following proposed regulatory actions (click on the regulation to view the proposal on the Virginia Regulatory Town Hall):

Definitions and Miscellaneous: In General (4VAC15-20)

Game: In General (4VAC15-40)

Game: Bear (4VAC15-50)

Game: Deer (4VAC15-90)

Game: Fox (4VAC15-110)

Harvest Reporting Requirements for Certain Game Species (multiple chapters)

Game: Squirrel (4VAC15-230)

Game: Turkey (4VAC15-240)

Game: Waterfowl and Waterfowl Blinds (4VAC15-260)

Watercraft: Safe and Reasonable Operation of Vessels (4VAC15-390)

Watercraft: Navigation Lights and Shapes (4VAC15-420)

Comment may be submitted to the contact listed at the end of this notice using the contact information provided.

Public comment deadline: May 24, 2023.

Comment may also be made at the Board of Wildlife Resources meeting being announced in this notice. Instructions will be posted at <https://dwr.virginia.gov/meetings/>.

Public hearing (meeting) information:

May 25, 2023 - 9 a.m. - Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228.

After hearing public comment on the proposed amendments, the board anticipates adopting final regulation amendments.

Contact Information: Cale Godfrey, Assistant Director, Wildlife Division, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 308-4210, or email cale.godfrey@dwr.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the Virginia Register of Regulations since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the Virginia Register of Regulations. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

