VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

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

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

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

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

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

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

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

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

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **28:2 VA.R. 47-141 September 26, 2011,** refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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

PUBLICATION SCHEDULE AND DEADLINES

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

July 2012 through July 2013

Volume: Issue	Material Submitted By Noon*	Will Be Published On
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
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29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 **(Tuesday)**	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 **(Tuesday)**	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
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29:14	February 20, 2013	March 11, 2013
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29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending **8VAC20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia.** The purpose of the proposed action is to amend existing regulations to address the accreditation of public virtual schools operating under the authority of the local school boards. The board will address situations where a student could be enrolled in a public school and take all coursework virtually, rather than in a traditional "brick and mortar" environment.

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

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

Public Comment Deadline: August 15, 2012.

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

VA.R. Doc. No. R12-3261; Filed June 14, 2012, 10:30 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Withdrawal of Intended Regulatory Action

The State Water Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **9VAC25-260, Water Quality Standards,** which was published in 28:6 VA.R. 563 November 21, 2011. The board voted to withdraw the notice to designate a portion of Bull Run as exceptional state waters based on impacts of the designation and withdrawal of the petition by the National Park Service.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O.Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R12-3003; Filed June 26, 2012, 4:11 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-192, Virginia Pollution Abatement (VPA) General Permit Regulations for Animal Feeding Operations.** The purpose of the proposed action is to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) General Permit Regulation for Animal Feeding Operations (AFOs). The current VPA general permit expires on November 15, 2014. The VPA General Permit Regulation for AFOs governs the pollutant management activities of animal wastes at AFOs not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and having 300 or more animal units utilizing a liquid manure collection and storage system. These AFOs may operate and maintain treatment works for waste storage, treatment, or recycle and may perform land application of manure, wastewater, compost, or sludges. The amendments to the VPA permit regulation (9VAC25-32, provisions) related to AFOs will be covered by a concurrent NOIRA.

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

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

Public Comment Deadline: August 15, 2012.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email betsy.bowles@deq.virginia.gov.

VA.R. Doc. No. R12-3285; Filed June 27, 2012, 9:51 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Real Estate Board intends to consider amending **18VAC135-20, Virginia Real Estate Board Licensing Regulations.** The purpose of the proposed action is to make clarifying changes, incorporate revised education requirements and new audit and voluntary compliance requirements, ensure consistency with state law, and make any other changes that may be considered necessary.

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

Statutory Authority: § 54.1-2105 of the Code of Virginia.

Public Comment Deadline: August 15, 2012.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

VA.R. Doc. No. R12-3250; Filed June 26, 2012, 6:30 p.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

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

Final Regulation

Title of Regulation: **1VAC20-50. Candidate Qualification (amending 1VAC20-50-20).**

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

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

Agency Contact: David Blackwood, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8930, or email david.blackwood@sbe.virginia.gov.

Summary:

The amendments (i) incorporate the requirements of Chapter 166 of the 2012 Acts of Assembly relating to the qualifications of a candidate petition circulator and (ii) clarify the use of the term "petition." The amendments also classify as material omissions, which render the candidate petition invalid, (i) the failure to identify the office sought on the front of the petition form; (ii) the failure to identify the applicable election district in which the candidate is running for office; and (iii) the failure to comply with statutory notary requirements.

1VAC20-50-20. Material omissions from candidate petitions.

A. Pursuant to the requirements of §§ 24.2-506, 24.2-521, and 24.2-543 of the Code of Virginia, a petition ~~page~~ should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions should be rendered invalid if:

1. The petition submitted is not the double-sided~~, two-page~~ document, or a copy thereof, provided by the State Board of Elections;

2. The petition does not have the name, or some variation of the name, and address of the candidate on the front of the form;

[3. The petition fails to identify the office sought on the front of the form;

4. The petition fails to identify the applicable election district in which the candidate is running for office;]

[~~3.~~ 5.] The circulator has not signed the petition affidavit and provided his current address;

[~~4.~~ 6.] ~~The circulator is not a registered voter or qualified to register and vote for the candidate~~ The circulator is (i) not a legal resident of the Commonwealth, (ii) a minor, or (iii) a felon whose voting rights have not been restored;

[~~5.~~ 7.] The circulator has not signed ~~each~~ the petition ~~page~~ he circulated in the presence of a notary;

[~~6.~~ 8.] The circulator has not had a notary sign the affidavit for each petition submitted; [~~or~~

9. The notary has not affixed a photographically reproducible seal;

10. The notary has not included his registration number and commission expiration date; or]

[~~7.~~ 11.] Any combination of the scenarios of this subsection exists.

C. If the circulator signs the petition in the "Signature of Registered Voter," his signature shall be invalidated but the petition ~~page~~ shall be valid notwithstanding any other error or omission.

D. [~~The petition should not be rendered invalid if:~~ The following omissions shall be treated as nonmaterial provided that the omitted information can be independently verified:]

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);

[~~2. The "office sought" is omitted;~~

~~3. The "congressional district" is omitted;~~

~~4.~~ 2.] The "election information" including (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted;

[~~5.~~ 3.] The name of the candidate and office sought are omitted from the back ~~page~~ of the petition; [or

~~6. The circulator has not indicated the county, city, or town of his voter registration or voter eligibility in the affidavit;~~

~~7.~~ 4.] The circulator has not provided the last four digits of his social security number in the affidavit [~~;~~.]

[~~8. The notary has not affixed a photographically reproducible seal; or~~

~~9. The notary has not included his registration number and commission expiration date.~~]

VA.R. Doc. No. R12-3156; Filed June 22, 2012, 2:50 p.m.

Final Regulation

Title of Regulation: **1VAC20-60. Election Administration (amending 1VAC20-60-20).**

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

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

Agency Contact: David Blackwood, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8930, or email david.blackwood@sbe.virginia.gov.

Summary:

The amendments (i) incorporate the requirements of Chapter 166 of the 2012 Acts of the Assembly relating to the qualifications of a referendum petition circulator and (ii) clarify the use of the word "petition." The amendments also reclassify the failure to comply with statutory notary requirements as a material omission rendering the referendum petition invalid.

1VAC20-60-20. Material omissions on referendum petitions.

A. Pursuant to the requirements of § 24.2-684.1 of the Code of Virginia, a petition should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any petition containing such omissions should be rendered invalid if:

1. The petition submitted is not the double-sided~~, two page~~ document, or a copy thereof, provided by the State Board of Elections;

2. The "question" or "referendum issue" is not stated in a manner set forth by law on the front of the petition;

3. The circulator has not signed the petition affidavit and provided his current address;

4. ~~The circulator is not a registered voter or qualified to register and vote on the issue~~ The circulator is (i) not a legal resident of the Commonwealth, (ii) a minor, or (iii) a felon whose rights have not been restored;

5. The circulator has not signed the affidavit for ~~each~~ the petition ~~page~~ he circulated in the presence of a notary;

6. The circulator has not had a notary sign the affidavit for each petition submitted; [~~or~~]

7. [~~Any combination of the aforementioned scenarios exist.~~ The notary has not affixed a photographically reproducible seal;

8. The notary has not included his registration number and commission expiration date; or

9. Any combination of the aforementioned scenarios exist.]

C. If the circulator signs the petition in the "Signature of Registered Voter" field, his signature shall be invalidated but the petition ~~page~~ shall be valid notwithstanding any other error or omission.

D. Subdivision B 3 of this section does not apply to a school board referendum submitted pursuant to § 24.2-57.2 or 24.2-165 of the Code of Virginia.

E. [~~The petition should not be rendered invalid if:~~ The following omissions shall be treated as nonmaterial provided that the omitted information can be independently verified:]

1. An older version of the petition is used (provided that the information presented complies with current laws, regulations, and guidelines);

2. The "election information" including: (i) county, city, or town in which the election will be held; (ii) election type; and (iii) date of election are omitted; [or]

[~~3. The circulator has not indicated the county, city, or town of his voter registration or voter eligibility in the affidavit;~~

~~4.~~ 3.] The circulator has not provided the last four digits of his social security number in the affidavit [~~;~~.]

[~~5. The notary has not affixed a photographically reproducible seal; or~~

~~6. The notary has not included his registration number and commission expiration date.~~]

VA.R. Doc. No. R12-3155; Filed June 22, 2012, 2:49 p.m.

Proposed Regulation

Title of Regulation: **1VAC20-70. Absentee Voting (amending 1VAC20-70-10).**

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

Public Hearing Information:

August 23, 2012, 2 p.m. - General Assembly Building, 201 N. 9th Street, House Room C, Richmond, VA

Public Comment Deadline: August 17, 2012.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (800) 552-9745 ext: 8925, FAX (804) 786-0760, TTY (800) 260-3466, or email martha.brissette@sbe.virginia.gov.

Summary:

The amendment removes "temporary" from the definition of "Federal only ballot overseas voter."

1VAC20-70-10. Definitions.

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

"Application for an absentee ballot" means an application for an absentee ballot submitted on any form approved for

that purpose according to federal and state laws. The term includes a Virginia Absentee Ballot Application (SBE-701), a Virginia Annual Absentee Ballot Application (SBE-703.1), and a Federal Post Card Application (SF-76A). A Federal Write-In Absentee Ballot (SF-186A) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.

"Envelope B" means the envelope required by § 24.2-706 of the Code of Virginia which identifies the voter.

~~"Temporary federal~~ "Federal only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia. The date the applicant has provided next to his affirmation will serve as his last date of residence.

VA.R. Doc. No. R12-3286; Filed June 27, 2012, 10:00 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 3.2-703 of the Code of Virginia, which exempts quarantine to prevent or retard the spread of a pest into, within, or from the Commonwealth.

Title of Regulation: **2VAC5-335. Virginia Emerald Ash Borer Quarantine for Enforcement of the Virginia Pest Law (amending 2VAC5-335-50).**

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: June 22, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

The amendment adds the counties of Charlotte, Halifax, Lunenburg, Mecklenburg, and Pittsylvania and the city of Danville to the emerald ash borer quarantine due to the detection of adult emerald ash borers in Charlotte and Pittsylvania counties.

2VAC5-335-50. Regulated areas.

The following areas in Virginia:

The entire counties of:

Arlington

Charlotte

Clarke

Fairfax

Fauquier

Frederick

Halifax

Loudoun

Lunenburg

Mecklenburg

Pittsylvania

Prince William

The entire independent cities of:

Alexandria

Danville

Fairfax City

Falls Church

Manassas

Manassas Park

Winchester

VA.R. Doc. No. R12-3244; Filed June 22, 2012, 11:10 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-450. Pertaining to the Taking of Bluefish (amending 4VAC20-450-10, 4VAC20-450-30).**

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

Effective Date: July 1, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment sets the commercial landings quota for bluefish from January 1 through December 31 at 1,225,649 pounds.

4VAC20-450-10. Purpose.

~~Stock assessment information indicates that bluefish stocks along the Atlantic Coast are fully exploited and show signs of declining abundance. One purpose~~ The purposes of this chapter ~~is~~ are to control the recreational harvest of bluefish ~~(which constitutes approximately 77% of the fishing coastwide)~~ and to establish a commercial quota system for Virginia bluefish landings, in cooperation with the Mid-Atlantic Fishery Management Council and other coastal states, to prevent overfishing. ~~A second purpose is to establish a commercial quota system for Virginia bluefish landings when the coastwide commercial fishery is projected to equal or exceed 20% of total (recreational and commercial) landings.~~

4VAC20-450-30. Commercial landings quota.

A. During the period of January 1 through December 31, commercial landings of bluefish shall be limited to ~~1,113,727~~ 1,225,649 pounds.

B. When it is projected that 95% of the commercial landings quota has been realized, a notice will be posted to close commercial harvest and landings from the bluefish fishery within five days of posting.

C. It shall be unlawful for any person to harvest or land bluefish for commercial purposes after the closure date set forth in the notice described in subsection B of this section.

VA.R. Doc. No. R12-3288; Filed June 28, 2012, 2:18 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Soil and Water Conservation Board is claiming an exemption from the Administrative Process Act pursuant to § 10.1-104.9 of the Code of Virginia, which establishes a regulatory process for the promulgation of regulations for the enforcement of Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia relating to resource management plans.

Title of Regulation: **4VAC50-70. Resource Management Plans (adding 4VAC50-70-10 through 4VAC50-70-150).**

Statutory Authority: § 10.1-104.8 of the Code of Virginia.

Public Hearing Information:

August 13, 2012, 7 p.m. - Bland Hall, Room 104, Wytheville Community College, 1000 East Main Street, Wytheville, VA

August 14, 2012, 7 p.m. - Smith Transfer Room West, Augusta County Government Center, 18 Government Center Lane, Verona, VA

August 15, 2012, 7 p.m. - James City County Community Center, Community Room A, 5301 Longhill Road, Williamsburg, VA

Public Comment Deadline: September 14, 2012.

Agency Contact: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Basis: Chapter 781 of the 2011 Virginia Acts of Assembly (HB1830) authorized the Virginia Soil and Water Conservation Board to establish regulations that specify the criteria to be included in a resource management plan and set out the regulatory process by which the regulations are promulgated. The proposed regulations meet the intent of § 10.1-104.7 of the Code of Virginia and remain true to the regulatory criteria framework set out in § 10.1-104.8 of the Code of Virginia. The regulatory process followed is in accordance with § 10.1-104.9 of the Code of Virginia.

Purpose: The regulation implements a process by which farmers may improve the water quality of Virginia's rivers and the Chesapeake Bay through the voluntary implementation of a high level of best management practices (BMPs) on their property and thereby be certified for a nine-year period as being compliant with (i) any load allocation contained in a total maximum daily load (TMDL) established under 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment. Such action will protect the health, safety, and welfare of citizens through the water quality improvements that will result through implementation of the proposed regulations.

Within the Chesapeake Bay watershed, this regulatory action will address the Environmental Protection Agency's (EPA) established requirements within the state Watershed Implementation Plans (WIP) as part of a larger Chesapeake Bay TMDL accountability framework. Virginia's Phase I WIP was approved by EPA on December 29, 2010. Additionally, as part of the accountability framework, the Commonwealth submitted preliminary milestones for 2012-2013 to EPA on November 4, 2011, and final programmatic milestones on January 6, 2012. These represent the first set of two-year milestone commitments associated with the Bay TMDL. Virginia submitted a draft Phase II WIP document on December 15, 2011, and a final Phase II WIP on March 30, 2012. This document supplements the strategies offered in Virginia's Phase I WIP. The resource management plan regulations are a component of the WIP and the milestones. The RMP regulations set forth specific criteria for the implementation of a suite of agricultural BMPs and will serve to promote greater and more consistent use of voluntary agricultural practices across the state. The RMP regulations, though voluntary, provide an incentive to farmers who utilize agricultural BMPs in that they will receive a "safe harbor" from future mandatory requirements related to the Chesapeake Bay TMDL. They may also be used as a baseline for participation in the expanded nutrient credit exchange

program. By incentivizing such practices, the RMP program can serve as a mechanism for localities to implement their agricultural strategies and BMPs.

This regulatory approach was also determined to be the best path forward in order to meet the necessary nutrient and sediment reductions and to protect the health, safety, or welfare of citizens. In 2010, the Department of Conservation and Recreation developed several draft bills for the consideration of the Administration and the public that would have made livestock exclusion and nutrient management planning mandatory. These draft proposals were floated to stakeholders for comment. In response to these comments and discussions with stakeholders and the Administration and in lieu of these mandatory actions, a more progressive piece of legislation establishing a voluntary resource management plan approach was introduced and enacted by the General Assembly and Governor.

Accordingly, the resulting legislation (Chapter 781 of the 2011 Acts of Assembly (HB1830)) authorized the Virginia Soil and Water Conservation Board to establish new regulations that clarify and specify the criteria that must be included in a resource management plan and the processes by which a certificate of RMP implementation is issued and maintained.

As specified in the resulting law, it is the goal of these regulations to:

1. Be technically achievable and take into consideration the economic impact to the agricultural landowner or operator;

2. Include (i) determinations of persons qualified to develop resource management plans and to perform on-farm best management practice assessments; (ii) plan approval or review procedures if determined necessary; (iii) allowable implementation timelines and schedules; (iv) determinations of the effective life of the resource management plans taking into consideration a change in or a transfer of the ownership or operation of the agricultural land, a material change in the agricultural operations, issuance of a new or modified TMDL implementation plan for the Chesapeake Bay or other local TMDL water quality requirements, and a determination pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2 of the Code of Virginia that an agricultural activity on the land is creating or will create pollution; (v) factors that necessitate renewal or new plan development; and (vi) a means to determine full implementation and compliance with the plans including reporting and verification;

3. Provide for a process by which an on-farm assessment of all reportable best management practices currently in place, whether as part of a cost-share program or through voluntary implementation, shall be conducted to determine their adequacy in achieving needed on-farm nutrient, sediment, and bacteria reductions;

4. Include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local TMDL water quality requirements of the Commonwealth; and

5. Specify that the required components of each resource management plan shall be based upon an individual on-farm assessment. Such components shall comply with on-farm water quality objectives as set forth in subdivision B 4 (directly above), including best management practices identified in this subdivision and any other best management practices approved by the board or identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan.

On a statewide basis, the voluntary implementation of these regulations will provide substantial incentives to farmers to implement high priority water quality conservation practices and specifically within the Chesapeake Bay watershed, implementation will help the Commonwealth meet its commitments outlined in the Phase II Watershed Implementation Plan and provide for "agricultural certainty."

Substance: This entire regulatory action involves the promulgation of a new regulation by the Virginia Soil and Water Conservation Board titled Resource Management Plans (4VAC50-70).

The key substantive elements of this proposed regulatory action include:

1. Establishment of minimum standards of a resource management plan (RMP) (4VAC50-70-40);

2. Processes for the development, updating, and approval of an RMPs by RMP reviewers (4VAC50-70-50) and (4VAC50-70-60);

3. Processes to ensure the implementation of an RMP and for issuance of a certificate of RMP implementation (4VAC50-70-70) and (4VAC50-70-80);

4. Processes associated with conducting inspections by the RMP reviewer and ensuring RMP compliance after certificate issuance by the Department of Conservation and Recreation including issuance of deficiency notices and development and implementation of corrective action agreements (4VAC50-70-90) and (4VAC50-70-100);

5. Procedures for the review of duties performed by local soil and water conservation districts; (4VAC50-70-130); and

6. Establishment of qualifications and certification processes for RMP developers and the issuance or revocation of an RMP developer certificate by the Department of Conservation and Recreation (4VAC50-70-140).

Issues: The framework and content of this regulatory action largely tracks the specifics outlined in the Code of Virginia regarding the promulgation of these regulations. As such,

limited discretion regarding voluntary compliance requirements was available. However, the department working with the Regulatory Advisory Panel to develop the proposed regulations was careful to minimize, where latitude did exist, disadvantages of the program and to develop a program that will have water quality advantages for the general public and compliance protection for the farmer when under Certificate of RMP Implementation. Voluntary participation in this regulatory program will be an advantage to the Commonwealth as it will help the Commonwealth meet its commitments outlined in the Phase II Watershed Implementation Plan and other TMDLs and provide for "agricultural certainty."

Additional information regarding the advantages and disadvantages to the public may be found in the Department of Planning and Budget's Economic Impact Analysis.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In accordance with Chapter 781 of the 2011 Virginia Acts of Assembly (HB1830) the Virginia Soil and Water Conservation Board proposes to establish these new regulations in order to clarify and specify the criteria that must be included in a resource management plan (RMP) for farmers and the processes by which a Certificate of RMP Implementation is issued and maintained. Neither RMP implementation nor the obtaining of a Certificate of RMP Implementation is required. The intent of the regulatory action is to encourage farm owners and operators to voluntarily implement a high level of best management practices (BMPs) on their farmlands in order to be protective of water quality and for the farmers to then benefit from the following legal provision:

> notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in 10.1-104.[8] and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment.

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

Estimated Economic Impact. Participation in the RMP program is completely optional; thus the proposed regulations do not introduce costs to the public. To the extent that farmers choose to follow BMPs that they are not already following due to these regulations and the RMP program, there will likely be some improvement to water quality in the Chesapeake Bay and other Virginia waterways. Improved water quality can potentially benefit commercial and recreational fisheries and tourism, increase property values, and reduce public health costs. Several different types of firms (see below) may see increased demand for their services and products in order to help farmers follow BMPs and acquire a Certificate of RMP Implementation.

Businesses and Entities Affected. The proposed regulations potentially affect: 1) the 47,000 (approximation) farms in the Commonwealth, 2) private contractors and consultants that perform conservation planning and implementing services for farmers, 3) sellers of fencing materials, livestock watering systems, fertilizer, and farming machinery that improves efficiency and productivity and minimizes nonpoint source pollution, 4) commercial fisheries, and 5) tourism-related businesses. Most of these farms and firms would qualify as small businesses. Virginias 47 local Soil and Water Conservation Districts will be responsible for performing many of the programs oversight functions including engaging agricultural communities at the local level. The public and other entities may be affected through the benefits associated with cleaner water such as improved health, better recreational experiences, and higher property values.

Localities Particularly Affected. The proposed regulations affect all Virginia localities, but may particularly affect the more agriculturally oriented parts of the Commonwealth.

Projected Impact on Employment. The proposed regulations may moderately increase business and hence employment at some of the following types of small firms: 1) private contractors and consultants that perform conservation planning and implementing services for farmers, 2) sellers of fencing materials, livestock watering systems, fertilizer, and farming machinery that improves efficiency and productivity and minimizes nonpoint source pollution, and 3) tourism-related businesses. Commercial fisheries may encounter increased numbers of aquatic life to process and hence have need for more employees.

Effects on the Use and Value of Private Property. The proposed regulations may moderately increase business and hence value for some of the following types of firms: 1) private contractors and consultants that perform conservation planning and implementing services for farmers, 2) sellers of fencing materials, livestock watering systems, fertilizer, and farming machinery that improves efficiency and productivity and minimizes nonpoint source pollution, and 3) tourism-related businesses. Commercial fisheries may encounter increased numbers of aquatic life and hence have more product to sell, potentially increasing firm value. Improved water quality may also raise property (real estate) values.

Small Businesses: Costs and Other Effects. The proposed regulations will not produce costs for small businesses, but may moderately increase business for some of the following types of small firms: 1) private contractors and consultants that perform conservation planning and implementing

services for farmers, 2) sellers of fencing materials, livestock watering systems, fertilizer, and farming machinery that improves efficiency and productivity and minimizes nonpoint source pollution, and 3) tourism-related businesses. Small commercial fisheries may encounter increased numbers of aquatic life and hence have more product to sell.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations do not adversely impact small businesses.

Real Estate Development Costs. To the extent that water quality is improved, the proposed regulations may in some cases reduce real estate development costs through reduced need to address polluted water on development sites.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Department of Conservation and Recreation concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the Resource Management Plans Regulation (4VAC50-70).

Summary:

In accordance with Chapter 781 of the 2011 Virginia Acts of Assembly (HB1830), this action establishes a new regulation related to resource management plans (RMPs) that represents a balanced process by which farmers may voluntarily implement a high level of best management practices that are protective of water quality and that may be applied toward necessary nutrient and sediment reductions associated with the Chesapeake Bay Watershed Implementation Plan and other total maximum daily loads.

Substantive elements of this proposed regulatory action include: (i) establishment of minimum standards of an RMP; (ii) processes for the development, updating, and approval of an RMP by RMP reviewers; (iii) processes to ensure the implementation of an RMP and for issuance of a Certificate of RMP Implementation; (iv) processes associated with conducting inspections by the RMP reviewer and ensuring RMP compliance after certificate issuance by the Department of Conservation and Recreation including issuance of deficiency notices and development and implementation of corrective action agreements; (v) procedures for the review of duties performed by local soil and water conservation districts; and (vi) establishment of qualifications and certification processes for RMP developers and the issuance or revocation of an RMP developer certificate by the Department of Conservation and Recreation.

CHAPTER 70
RESOURCE MANAGEMENT PLANS

4VAC50-70-10. Definitions.

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

"Assessment" means an onsite review of a management unit.

"Best management practice" or "BMP" means structural and nonstructural practices that manage soil loss, nutrient losses, or other pollutant sources to minimize pollution of water resources and improve water quality.

"Board" means the Virginia Soil and Water Conservation Board.

"Corrective action agreement" means a written agreement that guides the owner or operator in the steps needed and the specific remedies required to return to compliance with the minimum standards of a resource management plan.

"Department" means the Department of Conservation and Recreation.

"Management unit" means one or more agricultural fields or United States Department of Agriculture Farm Service Agency tracts under the control of the owner or operator and identified as the appropriate unit for RMP implementation. The management unit may consist of multiple fields and tracts or an entire agricultural operation.

"NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"Operator" means a person who exercises managerial control over the management unit.

"Owner" means a person who owns land included in a management unit.

"Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, any interstate body, or any other legal entity.

"Resource management plan" or "RMP" means a plan developed and implemented pursuant to the standards established by this chapter.

"Review authority" means a soil and water conservation district or the department where no soil and water conservation district exists that is authorized under this chapter to determine the adequacy of a resource management plan and perform other duties specified by this chapter.

"RMP developer" means an individual who meets the qualifications established by this chapter to prepare or revise a resource management plan.

"Soil and water conservation district" or "district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1 of the Code of Virginia.

"Technical Review Committee" or "TRC" means a committee established by a soil and water conservation district board to review RMPs and provide recommendations to the soil and water conservation district board regarding RMPs. A TRC may include, but not be limited to, the following members: soil and water conservation district directors, associates, and personnel; Virginia Cooperative Extension personnel; department nutrient management specialists; and such other technical resources available to the district.

"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 for point source discharges and load allocations for nonpoint sources or natural background, or both, and must include a margin of safety and account for seasonal variations.

4VAC50-70-20. Purpose and authority.

Pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia, this chapter is adopted to clarify and specify the criteria that must be included in a resource management plan and the processes by which a Certificate of RMP Implementation is issued and maintained. Except as provided for in 4VAC50-70-30, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plans, in accordance with the criteria for such plans set out in § 10.1-104.8 of the Code of Virginia and any requirements of this chapter, shall be deemed to be in full compliance with any load allocation contained in a TMDL established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and applicable state water quality requirements for nutrients and sediment.

4VAC50-70-30. Applicability of other laws and regulations.

Nothing in this chapter shall be construed as limiting the applicability of other laws, regulations, or permits including, but not limited to, a Virginia Pollutant Discharge Elimination System Permit, a Virginia Pollution Abatement Permit, a nutrient management plan otherwise required by law, any requirements of the Chesapeake Bay Preservation Act, and any requirements of the Agricultural Stewardship Act.

4VAC50-70-40. Minimum standards of a resource management plan.

A. Pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia, a resource management plan requires the implementation of BMPs sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local TMDL water quality requirements of the Commonwealth. Pursuant to subdivision B 5 of § 10.1-104.8 of the Code of Virginia, a RMP shall address all of the following BMP requirements when applicable to the management unit and needed based upon an on-farm assessment of the following land uses:

1. For all cropland or specialty crops:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives;

c. A soil conservation plan that achieves a maximum soil loss rate to "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions; and

d. Cover crops, when needed to address nutrient management and soil loss requirements, that provide for reportable practices which meet best management practice specifications as determined by NRCS or the Virginia Agricultural Best Management Practices Cost-Share Program.

2. For all hayland:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A forest or grass buffer between cropland and perennial streams shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the edge of the field to meet water quality objectives; and

c. A soil conservation plan that achieves a maximum soil loss rate to "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions.

3. For all pasture:

a. A nutrient management plan that meets the specifications of the Nutrient Management Training and Certification Regulations (4VAC5-15);

b. A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of "T" as defined by NRCS and such BMPs necessary to address gross erosion when it is present as gullies or other severely eroding conditions; and

c. A system that limits or prevents livestock access to perennial streams requires that:

(1) Any fencing or exclusion system provides year-round livestock restriction to perennial streams;

(2) A forest or grass buffer between the exclusion system and a perennial stream shall be consistent with NRCS standards and specifications, except no buffer shall be less than a minimum width of 35 feet as measured from the top of the channel bank to the exclusion system to meet water quality objectives; and

(3) Provisions that are made for access through stream crossings and livestock watering systems are designed to NRCS standards and specifications and are determined necessary by the RMP developer.

B. Other BMPs approved by the department may be applied to achieve the minimum standards of this section beyond those already identified by NRCS or within the Virginia Agricultural Best Management Practices Cost-Share Program.

C. The department shall evaluate the minimum standards of this section to determine their adequacy when revisions occur to a load allocation contained in a TMDL established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and applicable state water quality requirements for nutrients and sediment. Changes to the minimum standards by the board may result in the use of BMPs identified in the Chesapeake Bay Watershed Model, identified in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, or approved by the department.

4VAC50-70-50. Components of a resource management plan.

A. Pursuant to subdivision B 3 of § 10.1-104.8 of the Code of Virginia, an assessment shall be performed by the RMP developer or by an individual authorized by the RMP developer to perform work on his behalf and shall gather and evaluate the following information:

1. Information on the location of the management unit, including geographic coordinates, United States Department of Agriculture Farm Service Agency tract number or numbers, if applicable, or the locality tax parcel identification number or numbers;

2. Description of the management unit, including acreage, water features, environmentally sensitive features, erosion issues, and agricultural activity;

3. Contact information for the owner or operator who has requested the RMP, including name, address, and telephone number;

4. Authorization from the owner or operator for the RMP developer, or his designee, for right of entry and access to property specified within the management unit and authorization to obtain copies of any conservation or water quality plans necessary for the assessment;

5. Copies of nutrient management plans, soil conservation plans from NRCS, RMPs, and any other conservation or water quality plan that includes the implementation of BMPs; and

6. Information on the location and status of all BMPs and other alternative measures applicable to the management unit that are currently implemented.

B. Following the assessment provided in subsection A of this section, the RMP developer shall prepare the RMP in a format established by the department or in a format approved by the board as equivalent that contains the following components:

1. A determination of the adequacy of existing BMPs, conservation plans, and water quality plans in meeting the minimum standards set out in 4VAC50-70-40;

2. A complete list of BMPs, developed as a result of the assessment required in subsection A of this section, that may be utilized to meet the minimum standards set out in 4VAC50-70-40;

3. A complete list of the BMPs that the owner or operator agrees to implement or maintain to meet the minimum standards set out in 4VAC50-70-40;

4. A confirmation of BMPs that achieve the minimum standards set out in 4VAC50-70-40;

5. A schedule for the implementation of the BMPs;

6. An inclusion of any current nutrient management plans, soil conservation plans, and any other conservation or water quality plans that include the implementation of BMPs; and

7. Other information collected pursuant to subsection A of this section.

C. Certification.

1. The RMP developer must certify that the RMP is true and correct in his professional judgment.

2. The RMP must be signed by the owner or operator affirming that he:

a. Is the responsible individual to be implementing the RMP in its entirety;

b. Shall adhere to the RMP;

c. Shall allow the review authority to conduct inspections of properties within the management unit as needed to ensure the adequacy of the RMP in accordance with 4VAC50-70-70;

d. Shall notify the RMP developer within 60 days of potential material changes to the management unit that may require revision of the plan pursuant to 4VAC50-70-60; and

e. Shall notify the review authority of a complete change in owner or operator of the management unit or units under the RMP. If a management unit falls within one or more soil and water conservation districts, the owner or operator shall contact the district containing the greatest land area of the management unit.

4VAC50-70-60. Revisions to a resource management plan.

A. Upon notification of the review authority by an owner or operator of a change in owner or operator of the management unit with a signed RMP, in accordance with 4VAC50-70-50 C 2 e, where it involves the complete transfer of one or more RMPs and any Certificate or Certificates of RMP Implementation previously issued by the department for such RMPs:

1. The review authority shall contact the new owner or operator within 60 days of the new owner or operator assuming control of the management unit regarding implementation of the RMP and any necessary revisions.

2. Following consultation with the review authority, the new owner or operator may elect to:

a. Implement and maintain the provisions of the existing RMP. The new owner or operator must sign the RMP in accordance with 4VAC50-70-50 C. If a Certificate of RMP Implementation has been issued to the prior owner or operator, the certificate shall be transferred by the department to the new owner or operator upon notification by the review authority. The transferred certificate shall be valid for the balance of time remaining since it was originally issued by the department;

b. Contact the RMP developer when changes in the operation are planned by the new owner or operator or are otherwise required by this chapter. The new owner or operator may request the RMP developer to revise the RMP as necessary to fulfill BMP requirements pursuant to 4VAC50-70-50 and the administrative requirements of subsection D of this section; or

c. Choose not to continue implementing the RMP. If a Certificate of RMP Implementation for the management unit has been issued, it shall be revoked by the department.

B. Upon notification of the RMP developer by the owner or operator of the management unit with a signed RMP, in accordance with 4VAC50-70-50 C, that changes in the management unit or implementation of the RMP may create needs for revision, the RMP developer shall review the RMP within 30 days to determine if material changes to the management unit require a revision of the RMP in accordance with the following:

1. Material changes to the management unit that may require a revision of the RMP include:

a. A conversion from one type of agricultural operation to another;

b. A change in the schedule and type of BMPs implemented pursuant to 4VAC50-70-50;

c. An increase or decrease in production acreage that materially impacts the management unit's ability to meet the minimum standards set out in 4VAC50-70-40;

d. An increase or decrease in livestock population that materially impacts the management unit's ability to meet the minimum standards set out in 4VAC50-70-40; or

e. Any other change the RMP developer identifies that would materially impact the management unit's ability to meet the minimum standards set out in 4VAC50-70-40.

2. The RMP developer will determine if revision of the RMP is required. When the RMP developer determines that revision of the existing RMP is not necessary, the RMP developer shall provide such determination to the requesting owner or operator in writing. Such documentation shall be available upon inspection by the review authority. When the RMP developer determines that revision of the existing RMP is necessary, the owner or operator may elect to:

a. Request the RMP developer to revise the RMP as necessary to fulfill RMP requirements pursuant to 4VAC50-70-50 and the administrative requirements of subsection D of this section; or

b. Choose not to continue implementing a RMP whereupon the RMP for the management unit shall no longer be valid. The RMP developer shall notify the review authority and the department in writing of this decision by the owner or operator. If a Certificate of RMP Implementation for the management unit has been issued, it shall be revoked by the department.

C. When an owner or operator does not hold a Certificate of RMP Implementation for an RMP that has been approved by the review authority, revision of the RMP is required when a new or modified watershed implementation plan is issued for the Chesapeake Bay or a new or modified local approved TMDL is issued that assigns a load to agricultural uses. An RMP covering land with waters that drain to such TMDL shall be deemed sufficient when the RMP has been revised to address the new or modified TMDL and the owner or

operator agrees to implement the revised RMP, except as provided in subsection D of this section.

D. When an owner or operator holds a Certificate of RMP Implementation that has not expired, revision of the RMP specified in subsection C of this section is not required. In this case the owner or operator may continue operation of the RMP without revision due to a new or modified watershed implementation plan for the Chesapeake Bay or a new or modified local approved TMDL for the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.

E. When an owner or operator with a revised RMP fulfills all requirements pursuant to this section and 4VAC50-70-70, and the owner or operator holds a Certificate of RMP Implementation that has not expired for the management unit addressed by the revised RMP, the owner or operator may request that the department revoke the existing Certificate of RMP Implementation and issue a new Certificate of RMP Implementation. The department shall evaluate and respond to all requests. Upon verification that all requirements have been satisfied, the department shall issue a new Certificate of RMP Implementation in a timely manner and ensure that no owner or operator is found out of compliance with any requirements of this chapter due to any delays in the department's issuance of a new Certificate of RMP Implementation pursuant to this subsection even if the original certificate expires during this issuance time period.

F. Revision of an RMP by an RMP developer requires:

1. If a Certificate of RMP Implementation has not been issued, the revised RMP shall be provided to the review authority and shall be subject to all review requirements set out in 4VAC50-70-70 and shall be subject to the requirements for issuance of a Certificate of RMP Implementation pursuant to 4VAC50-70-80.

2. If a Certificate of RMP Implementation has been issued by the department and its duration has not expired, such existing Certificate of RMP Implementation shall remain valid for the balance of time remaining since it was originally issued by the department or a new Certificate of RMP Implementation may be issued where appropriate in accordance with subsection E of this section.

3. An existing or new owner or operator shall sign a revised RMP pursuant to 4VAC50-70-50 C.

4. When a valid Certificate of RMP Implementation has been issued by the department for the management unit, the RMP developer shall provide the review authority and the department with a copy of a revised RMP within 30 days of completion of the revised plan.

4VAC50-70-70. Review of a resource management plan.

A. Upon completion of a new or revised RMP in accordance with 4VAC50-70-50 and 4VAC50-70-60, the owner or operator or the RMP developer on behalf of the owner or operator, shall submit the RMP to the review authority.

B. Each soil and water conservation district shall establish a Technical Review Committee (TRC). RMPs received by a soil and water conservation district shall be referred to the TRC for review to ensure the RMP fully meets the minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50. Within 90 days of receipt of the RMP, the soil and water conservation district shall notify the owner or operator and the RMP developer in writing if the RMP fulfills such requirements. An RMP that fails to fulfill such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt.

C. If an RMP is located within multiple soil and water conservation districts, each TRC will review the portion of the plan applicable to the management unit within their district, either in consultation or independently of each other. The soil and water conservation district with the largest amount of acreage under the RMP has lead responsibility for (i) coordinating the review among multiple districts; (ii) resolving disputes; (iii) corresponding with the owner or operator and RMP developer regarding the RMP review; and (iv) when appropriate, submitting required documentation to the department to support issuance of a Certificate of RMP Implementation.

D. RMPs received by the department where no local soil and water conservation district exists must fully meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50 and shall be reviewed by the department. Within 90 days of receipt of the RMP, the department shall notify the owner or operator and the RMP developer if the RMP fulfills such requirements. An RMP that fails to fulfill such requirements shall be returned to the RMP developer noting all deficiencies. A revised RMP may be resubmitted once the noted deficiencies have been satisfactorily addressed. Revised submittals shall be reviewed and a response regarding RMP sufficiency or a listing of RMP deficiencies provided within 45 days of receipt.

E. When an RMP is determined by the review authority to be insufficient to meet minimum standards set forth in 4VAC50-70-40 and the components specified in 4VAC50-70-50, such review authority shall work with the owner or operator and the RMP developer to revise the RMP.

F. Where an RMP is deemed sufficient, the notification issued to the owner or operator and the RMP developer by the review authority shall include approval of the plan and its implementation in accordance with subsection B or D of this section, whichever is applicable.

G. When an owner or operator is aggrieved by an action of the review authority pursuant to this section, the owner or operator shall have a right to appeal in accordance with 4VAC50-70-110.

4VAC50-70-80. Issuance of a Certificate of Resource Management Plan Implementation.

A. Prior to issuance of a Certificate of RMP Implementation for a management unit, confirmation shall be made by the RMP developer that no revision of the RMP is required in accordance with 4VAC50-70-60 and as such is adequate, and verification of the full implementation of the RMP shall be completed. The owner or operator shall request the verification of RMP implementation by the review authority.

B. The request to the review authority for verification in a format provided by the department shall include the following:

1. A complete copy of the RMP including any referenced plans;

2. Authorization for review authority employees to conduct an onsite inspection of the management unit to ensure the RMP is fully implemented; and

3. Authorization upon the issuance of a Certificate of RMP Implementation for review authority employees and the department to conduct onsite inspections of the management unit to ensure the continued implementation of, maintenance of, and compliance with the RMP in accordance with 4VAC50-70-90.

C. If based on onsite verification and a review of referenced plans by the local soil and water conservation district where the district is the review authority the RMP is determined to be adequate and fully implemented in accordance with subsection A of this section, the soil and water conservation district board shall affirm such adequacy and implementation and submit the required documentation to the department for action. Upon receiving such documentation supporting that the plan is adequate and has been fully implemented, the department shall issue a Certificate of RMP Implementation.

D. Where the department is the review authority, the department shall determine adequacy and full implementation of the RMP in accordance with subsection A of this section through onsite verification and a review of referenced plans. If based on the onsite verification and a review of referenced plans, the RMP is determined to be adequate and fully implemented, the department shall affirm such implementation by issuing a Certificate of RMP Implementation.

E. If the resource management plan is not adequate or has not been fully implemented, the review authority shall provide the owner or operator with written documentation that specifies the deficiencies of the RMP within 30 days following the field review of the RMP. The owner or operator may correct the named deficiencies and request verification of RMP adequacy or implementation at such time as the shortcomings have been addressed.

F. A Certificate of RMP Implementation shall be valid for a period of nine years.

G. An owner or operator who holds a Certificate of RMP Implementation that has not expired shall not be required to revise the RMP when the issuance of a new or modified watershed implementation plan for the Chesapeake Bay TMDL or a new or modified local approved TMDL impacts any portion of the management unit during the lifespan of the Certificate of RMP Implementation so long as the owner or operator is deemed to be fully implementing the RMP.

H. Upon the expiration of the Certificate of RMP Implementation, a new RMP may be prepared by a plan developer for the management unit upon request by the owner or operator. The RMP must conform with all existing TMDL implementation plans applicable to the management unit to include the Chesapeake Bay and any local approved TMDL, which assign a load to agricultural uses and impact any portion of the management unit. The plan developer shall ensure the new RMP complies with requirements set forth in 4VAC50-70-40.

I. The department shall maintain a public registry on the agency's website of all current Certificates of RMP Implementation in accordance with the provisions of subsection E of § 10.1-104.7 of the Code of Virginia.

4VAC50-70-90. Inspections.

A. Each management unit that has been issued a Certificate of RMP Implementation shall be subject to periodic onsite inspections to be performed by the review authority. In addition the department, when it is not the review authority but deems it appropriate, can conduct inspections to ensure the continued implementation of, maintenance of, and compliance with the RMP.

B. Onsite inspections shall occur no less than once every three years but not more than annually on lands where an active Certificate of RMP Implementation has been issued provided that no deficiencies have been noted pursuant to this section that may require more frequent inspections or re-inspections.

C. As part of an inspection, an owner or operator shall provide any documents needed to verify the implementation of the RMP, any documents pertaining to revision of the RMP when applicable, and any other referenced plans as applicable.

D. Upon the completion of the inspection, an inspection report shall be completed in a format provided by the department to document the implementation of the RMP on the management unit. A copy of the inspection report shall be provided to the department within 10 business days following the date of inspection with a copy to the owner or operator when inspections are performed by a soil and water conservation district. The inspection report shall include:

1. Confirmation of all BMPs implemented, operated, and maintained with a notation of changes in the operation of any BMPs included in the RMP; and

2. Any identified deficiencies that may include any components of the RMP that have not been satisfactorily implemented, components that need to be renewed, and any changes to the management unit that may need to be addressed through revision of the RMP.

E. If deficiencies are noted based upon the inspection, the department shall proceed pursuant to 4VAC50-70-100.

F. All inspections or re-inspections conducted in accordance with this chapter shall occur only after 48 hours of prior notice to the owner or operator unless otherwise authorized by the owner or operator.

4VAC50-70-100. Compliance.

A. If deficiencies are identified during an inspection conducted in accordance with 4VAC50-70-90, following review of such deficiencies the department shall provide a written notice to the owner or operator within 30 days of receipt of the inspection report. The written notice shall include a list of the noted deficiencies that need to be addressed to meet full implementation of the RMP.

B. Within 90 days of the written notice being issued to the owner or operator, a corrective action agreement in a format provided by the department, that may include revisions to the RMP, shall be developed by the RMP developer in consultation with the owner or operator, signed by the owner or operator, and submitted to the department for consideration. The corrective action agreement shall include an implementation schedule to correct the deficiencies found during the inspection. The department shall review the corrective action agreement including any revisions to the RMP within 30 days following receipt. The department shall consult with the review authority. If the corrective action agreement, including any revisions to the RMP, is determined by the department to be reasonable and satisfactory, the department shall convey such determination to the owner or operator in writing within 30 days following receipt.

C. If the department determines that the corrective action agreement, including any revisions to the RMP, does not satisfactorily address deficiencies documented from an inspection conducted pursuant to 4VAC50-70-90, the department shall document such deficiencies in writing to the owner or operator within 30 days following receipt of the corrective action agreement. A revised corrective action agreement may be submitted once the noted deficiencies have been satisfactorily addressed.

D. If the department and the owner or operator are unable to concur on a final corrective action agreement within 90 days of the submission of the initial corrective action agreement to the department or such additional time that is acceptable to the department, the department shall revoke the owner's or operator's Certificate of RMP Implementation after an informal fact finding proceeding held in accordance with § 2.2-4019 of the Code of Virginia.

E. If it is determined by the department through a re-inspection that an owner or operator has failed to fully implement the agreed upon corrective action agreement, the department shall revoke the owner's or operator's Certificate of RMP Implementation for the corrective action agreement. Such re-inspection shall be performed by the department or by the review authority when directed by the department.

F. At any time, the owner or operator may provide written notice to the department requesting that the Certificate of RMP Implementation be revoked.

4VAC50-70-110. Appeals.

A. An owner or operator that has been aggrieved by any action of a soil and water conservation district shall have a right to appeal to the department within 30 days of issuance of the district's decision. The department shall make its decision on an appeal in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In making its decision on an appeal, the department will hold an informal fact finding proceeding in accordance with § 2.2-4019 of the Code of Virginia.

B. Any party, including but not limited to a district, an owner or operator, or a RMP developer aggrieved by and claiming the unlawfulness of a case decision of the department shall have a right to appeal to the board in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In making its decision on an appeal, the board will hold an informal fact finding proceeding in accordance with § 2.2-4019 of the Code of Virginia.

C. Any party, including but not limited to a district, an owner or operator, or a RMP developer, aggrieved by and claiming the unlawfulness of a case decision of the board shall have a right to appeal to a court of competent jurisdiction in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. Revocation of a Certificate of RMP Implementation issued pursuant to 4VAC50-70-80 shall be suspended pending any appeals.

4VAC50-70-120. Reporting.

A. BMP data collection and reporting shall occur:

1. When a RMP assessment is conducted by a soil and water conservation district or when data is made available to a district by an owner or operator following an assessment performed by a RMP developer or individual authorized by them to perform an assessment pursuant to 4VAC50-70-50;

2. Upon changes or revisions to a RMP pursuant to 4VAC50-70-60;

3. Upon verification of the full implementation of the RMP as required by 4VAC50-70-80;

4. When inspections are conducted pursuant to 4VAC50-70-90; and

5. Upon any other opportunities when verification of BMP implementation becomes available.

B. BMP data collected in accordance with subsection A of this section shall be entered in the Virginia Agricultural BMP Tracking Program or any subsequent automated tracking systems made available to soil and water conservation districts by the department.

C. BMP data entry by soil and water conservation districts shall occur throughout the year; however, the annual reporting period shall begin July 1 of one year and end June 30 of the following year. Districts shall ensure all collected data is fully entered in the data collection system by July 31 following the close of the annual reporting period.

D. Any personal or proprietary information collected pursuant to Article 1.1 (§ 10.1-104.7 et seq.) of Title 10.1 of the Code of Virginia shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) and fully comply with all provisions of § 10.1-104.7 of the Code of Virginia.

E. The department, in accordance with subsection D of this section, shall make use of RMP BMP data for purposes that include progress reporting for the Chesapeake Bay TMDL watershed implementation plan; other local approved TMDLs; inclusion in the report required by § 2.2-220 of the Code of Virginia; and other reports required of the department or generated by the agency.

4VAC50-70-130. Review of duties performed by soil and water conservation districts.

A. The department shall periodically conduct a comprehensive review of the RMP duties performed by each soil and water conservation district to evaluate whether requirements set forth by this chapter have been satisfactorily fulfilled. The department shall develop a schedule for conducting periodic reviews and evaluations. Each district shall receive a comprehensive review at least once every five years; however, the department may impose more frequent, partial, or comprehensive reviews with cause. Such reviews where applicable shall be coordinated with those being implemented by agency staff for other purposes that may include annual spot checks of BMPs implemented by districts through the Virginia Agricultural BMP Cost Share Program.

B. If a review conducted by the department indicates that the soil and water conservation district has not administered, enforced where authorized to do so, or conducted its duties in a manner that satisfies the requirements set forth within this chapter, the department shall document such deficiencies and convey the needed corrective actions in writing to the soil and water conservation district's board of directors within 30 days following the review.

C. When the department determines:

1. The deficiencies are due to the district's failure to satisfactorily perform the required duties with the resources at its disposal, the department shall provide close oversight, guidance, and training as appropriate to enable the district to fully perform the duties required by this chapter. If after such actions there remains one or more deficiencies that cannot be resolved to the satisfaction of the department, the department may delay or withhold funding under its authority and control from the district that is not satisfactorily performing its RMP duties. Such duties may be assigned to another soil and water conservation district. Funds withheld from the district with deficiencies may be directed to the district that is performing the additional RMP duties.

2. The deficiencies are due to a work demand generated by the duties required by this chapter that exceed the district's existing resources, the department shall endeavor to assist the district in the performance of its duties and in finding a solution to the shortage of resources.

4VAC50-70-140. RMP developer qualifications and certification.

A. An individual shall be qualified to serve as an RMP developer if the individual:

1. Is certified as a conservation planner by the NRCS and is certified as a nutrient management planner by the department; or

2. Is certified as a nutrient management planner by the department and demonstrates academic and applied proficiencies with and an understanding of all of the following:

a. Agricultural conservation planning;

b. State and federal environmental laws and regulations and local ordinances;

c. State and federal laws and regulations that address the identification and preservation of historic resources;

d. Standards and specifications for agricultural conservation practices utilized in Virginia and the ability to plan and implement such practices;

e. Soil erosion processes and skill in applying approved erosion prediction technologies including the applicable current United States Department of Agriculture Revised Universal Soil Loss Equation and the Wind Erosion Equation;

f. The fundamentals of water quality and nonpoint source pollution, pest management, and fire management;

g. Site vulnerability assessment tools; and

h. Other proficiencies and understandings identified by the department in consultation with the board.

B. In a format established by the department, such individual shall submit documentation to the department for verification that the requirements of subsection A of this section have been met.

1. Upon receipt, the department shall review the documentation and issue its notification within 60 days. During its review the department shall determine:

a. If all required documentation is complete. If incomplete the applicant shall be notified.

b. If all requirements have been satisfied. If deficiencies exist the applicant shall be notified.

2. Applicants with deficiencies may submit additional documentation in support of their request to be certified. The department shall review the documentation provided within 30 days to determine its sufficiency.

3. When all requirements of this subsection have been met, the department shall issue to the applicant a Resource Management Plan Developer Certificate.

C. In the event that an individual's proficiency skills or the quality of technical work no longer meet the criteria for RMP developer certification, the individual's certification may be revoked by the department following a seven-day advance notification of the pending action and the holding of an informal fact finding proceeding held in accordance with § 2.2-4019 of the Code of Virginia. The department shall consider any action by NRCS to decertify a certified conservation planner. An RMP developer may appeal a decision of the department to the board in accordance with 4VAC50-70-110.

D. When an individual's RMP developer certificate has been revoked by the department, the basis for the revocation will be provided to the individual by the department. The individual will be informed of the steps necessary to address the deficiencies that led to the revocation and to re-establish certification.

E. Revocation of an individual's RMP developer certificate shall not result in revocation of a Certificate of RMP Implementation of which the RMP developer was party to.

F. The department shall maintain a public registry on the agency's website of all individuals issued a RMP developer certificate and shall note any subsequent revocations or other changes to the status of RMP developers.

4VAC50-70-150. Advancing the adoption of RMPs.

The department and districts shall encourage and promote the adoption of RMPs among agricultural communities across the Commonwealth.

VA.R. Doc. No. R12-3140; Filed June 25, 2012, 5:10 p.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-20. General Provisions (Rev. B12) (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (Rev. B12) (adding 9VAC5-40-8200 through 9VAC5-40-8370).

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

Effective Date: August 15, 2012.

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

Summary:

The federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish procedures for states to submit plans to control facilities that emit designated pollutants. These procedures are established in Subpart B of 40 CFR Part 60. Section 129 of the Act requires that EPA establish performance standards and other requirements pursuant to §§ 111 and 129 for each category of solid waste incineration units. Such standards include emissions limitations and other requirements applicable to new units and guidelines and other requirements applicable to existing units. It also requires states to submit plans for these sources in a process similar to that in § 111(d). Subpart B provides that EPA will publish guideline documents for development of state emission standards after promulgation of any standard of performance for designated pollutants. The emission guidelines (EGs) reflect the degree of emission reduction attainable with the best adequately demonstrated systems of emission reduction, considering costs, applied to existing facilities. EPA established EGs for sewage sludge incinerators in the Federal Register of March 21, 2011 (76 FR 15372). In order to implement the EGs, it is necessary for Virginia to develop and adopt a state regulation containing those limits.

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

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

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

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

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2010)~~ (2012) in effect July 1, ~~2010~~ 2012. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

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

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

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

1. Code of Federal Regulations.

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

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

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

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

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

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

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

(f) Appendix E -- Reserved.

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

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

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

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

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

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

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

(n) Appendix M -- Reserved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. U.S. Environmental Protection Agency.

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

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

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

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

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

3. U.S. government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. American Petroleum Institute (API).

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

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

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

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

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

7. National Fire Prevention Association (NFPA).

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

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

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

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

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

8. American Society of Mechanical Engineers (ASME).

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

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

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

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

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

9. American Hospital Association (AHA).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. California Air Resources Board (CARB).

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

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

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

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

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

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

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

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

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

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

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

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

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

13. American Architectural Manufacturers Association.

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

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

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

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

14. American Furniture Manufacturers Association.

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

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

Article 55
Emission Standards for Sewage Sludge Incineration Units (Rule 4-55)

9VAC5-40-8200. Applicability and designation of affected facility.

A. The affected facilities to which the provisions of this article apply are sewage sludge incineration (SSI) units that meet all of the following criteria:

1. SSI units that commenced construction on or before October 14, 2010.

2. SSI units that meet the definition of a SSI unit as defined in 9VAC5-40-8210.

3. SSI units not exempt under subsection D of this section.

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

C. The following provisions govern changes to SSI units.

1. If the owner of a SSI unit makes changes that meet the definition of modification after September 21, 2011, the SSI unit becomes subject to Subpart LLLL of 40 CFR Part 60 and the provisions of this article no longer apply to that unit.

2. If the owner of a SSI unit makes physical or operational changes to a SSI unit for which construction commenced on or before September 21, 2011, primarily to comply with the provisions of this article, Subpart LLLL of 40 CFR Part 60 does not apply to that unit. Such changes do not qualify as modifications under Subpart LLLL of 40 CFR Part 60.

D. Exempt from the provisions of this article are combustion units that incinerate sewage sludge and are not located at a wastewater treatment facility designed to treat domestic sewage sludge. These units may be subject to 40 CFR Part 60 (e.g., Subpart CCCC of 40 CFR Part 60). The owner of such a combustion unit shall notify the board of an exemption claim under this subsection.

E. The provisions of 40 CFR Part 60 (other than Subpart MMMM of 40 CFR Part 60) cited in this article are applicable only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

F. The provisions of Subpart MMMM (Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units) of 40 CFR Part 60 cited in this article are applicable only to the extent that they are incorporated by reference in 9VAC5-40-8370.

9VAC5-40-8210. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

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

C. Terms shall have the meanings given them in 40 CFR 60.5250, except for the following:

"Administrator" means the board.

"Performance test," as defined in 40 CFR 63.2, means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

"Table 1" means 9VAC5-40-8280 A and B.

"You" means the owner of an affected SSI unit.

9VAC5-40-8220. Emission limits and emission standards.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any SSI unit any emissions in excess of that allowed under subsection B of this section.

B. The provisions of 40 CFR 60.5165 apply.

9VAC5-40-8230. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of 9VAC5-40 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply, with the exception of 9VAC5-40-90 (Standard for fugitive dust/emissions).

9VAC5-40-8240. Standard for fugitive dust/emissions.

A. The provisions of Article 1 (9VAC5-40-60 et seq.) of 9VAC5-40 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply, with the exception of 9VAC5-40-80 (Standard for visible emissions), 9VAC5-40-100 (Monitoring), 9VAC5-40-110 (Test methods and procedures), and 9VAC5-40-120 (Waivers).

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any ash conveying system (including conveyor transfer points) any visible emissions for more than 5.0% of hourly observation period, measured at three, one-hour observation periods.

9VAC5-40-8250. Standard for odor.

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

9VAC5-40-8260. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of 9VAC5-60 (Emissions Standards for Toxic Pollutants from Existing Sources, Rule 6-4) apply.

9VAC5-40-8270. Operator training and certification.

A. The provisions of 40 CFR 60.5130, 40 CFR 60.5135, 40 CFR 60.5140, 40 CFR 60.5145, 40 CFR 60.5150, 40 CFR 60.5155, and 40 CFR 60.5160 apply.

B. The requirements of this section with regard to scheduling and obtaining certification through a program approved by the board may be met by obtaining a license from the Board for Waste Management Facility Operators. All training and licensing shall be conducted in accordance with Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia and with 18VAC155-20 (Waste Management Facility Operators Regulations).

C. No owner of an affected facility shall allow the facility to be operated at any time unless a person is on duty who is responsible for the proper operation of the facility and has a license from the Board for Waste Management Facility operators in the correct classification. No provision of this article shall relieve any owner from the responsibility to comply in all respects with the requirements of Chapter 22.1 (§ 54.1-2209 et seq.) of Title 54.1 of the Code of Virginia and with 18VAC155-20 (Waste Management Facility Operators Regulations).

9VAC5-40-8280. Compliance schedule.

A. SSI units shall achieve final compliance or cease operation as expeditiously as practicable but not later than March 21, 2016.

B. The owner shall submit a final control plan no later than March 21, 2013.

C. The provisions of 40 CFR 60.5085, 40 CFR 60.5090, 40 CFR 60.5095, 40 CFR 60.5100, 40 CFR 60.5105, 40 CFR 60.5110, 40 CFR 60.5115, 40 CFR 60.5120, and 40 CFR 60.5125 apply.

9VAC5-40-8290. Operating requirements.

A. No owner or other person shall operate any SSI unit in a manner that does not comply with the provisions of subsection B of this section.

B. The provisions of 40 CFR 60.5170 and 40 CFR 60.5175 apply.

9VAC5-40-8300. Compliance.

A. With regard to the emissions standards in 9VAC5-40-8240 A, 9VAC5-40-8250, and 9VAC5-40-8260, the provisions of 9VAC5-40-20 (Compliance) apply.

B. With regard to the emission limits in 9VAC5-40-8220, 9VAC5-40-8240 B, and 9VAC5-40-8290, the following provisions apply:

1. 9VAC5-40-20 B, C, D, and E;

2. To the extent specified in the federal regulations cited in subdivision 3 of this subsection, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11, and 40 CFR 60.13; and

3. 40 CFR 60.5185, 40 CFR 60.5190, 40 CFR 60.5195, 40 CFR 60.5200, 40 CFR 60.5205, 40 CFR 60.5210, and 40 CFR 60.5215.

9VAC5-40-8310. Performance testing, monitoring, and calibration requirements.

A. With regard to the emissions standards in 9VAC5-40-8240 A, 9VAC5-40-8250, and 9VAC5-40-8260, the provisions of 9VAC5-40-30 (Emission testing) and 9VAC5-40-40 (Monitoring) apply.

B. With regard to the emission limits in 9VAC5-40-8220, 9VAC5-40-8240 B, and 9VAC5-40-8290, the following provisions apply:

1. 9VAC5-40-30 D and G;

2. 9VAC5-40-40 A and F;

3. 40 CFR 60.8(b) through (f), with the exception of paragraph (a);

4. 40 CFR 60.13; and

5. 40 CFR 60.5220 and 40 CFR 60.5225.

9VAC5-40-8320. Recordkeeping and reporting.

A. With regard to the emissions standards in 9VAC5-40-8240 A, 9VAC5-40-8250, and 9VAC5-40-8260, the provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

B. With regard to the emission limits in 9VAC5-40-8220, 9VAC5-40-8240 B, and 9VAC5-40-8290, the following provisions apply:

1. 9VAC5-40-50 F and H;

2. 40 CFR 60.7; and

3. 40 CFR 60.5230 and 40 CFR 60.5235.

9VAC5-40-8330. Registration.

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

9VAC5-40-8340. Facility and control equipment maintenance or malfunction.

A. With regard to the emissions standards in 9VAC5-40-8240 A, 9VAC5-40-8250, and 9VAC5-40-8260, the provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

B. With regard to the emission limits in 9VAC5-40-8220, 9VAC5-40-8240 B, and 9VAC5-40-8290, the following provisions apply:

1. 9VAC5-20-180 with the exception of subsections E, F, and G; and

2. 40 CFR 60.5180 and 40 CFR 60.5181.

9VAC5-40-8350. Federal (Title V) operating permits.

A. The provisions of 40 CFR 60.5240 and 40 CFR 60.5245 apply.

B. Owners to which this section applies should contact the appropriate regional office for guidance on applying for a federal (Title V) operating permit.

9VAC5-40-8360. Other permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

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

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

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

6. Operation of a facility.

9VAC5-40-8370. Documents incorporated by reference.

A. The United States Environmental Protection Agency (EPA) regulations promulgated at Subpart MMMM (Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units) of 40 CFR Part 60 and designated in subsection B of this section are incorporated by reference into this article. The 40 CFR section numbers appearing in subsection B of this section identify the specific provisions incorporated by reference. The specific version of the provisions incorporated by reference shall be that contained in the CFR in effect as specified in 9VAC5-20-21 B.

B. The following documents from the United States Environmental Protection Agency are incorporated herein by reference:

Model Rule, Increments of Progress

40 CFR 60.5085, What are my requirements for meeting increments of progress and achieving final compliance?

40 CFR 60.5090, When must I complete each increment of progress?

40 CFR 60.5095, What must I include in the notifications of achievement of increments of progress?

40 CFR 60.5100, When must I submit the notifications of achievement of increments of progress?

40 CFR 60.5105, What if I do not meet an increment of progress?

40 CFR 60.5110, How do I comply with the increment of progress for submittal of a control plan?

40 CFR 60.5115, How do I comply with the increment of progress for achieving final compliance?

40 CFR 60.5120, What must I do if I close my SSI unit and then restart it?

40 CFR 60.5125, What must I do if I plan to permanently close my SSI unit and not restart it?

Model Rule, Operator Training and Qualification

40 CFR 60.5130, What are the operator training and qualification requirements?

40 CFR 60.5135, When must the operator training course be completed?

40 CFR 60.5140, How do I obtain my operator qualification?

40 CFR 60.5145, How do I maintain my operator qualification?

40 CFR 60.5150, How do I renew my lapsed operator qualification?

40 CFR 60.5155, What if all the qualified operators are temporarily not accessible?

40 CFR 60.5160, What site-specific documentation is required and how often must it be reviewed by qualified SSI operators and other plant personnel who may operate the unit according to the provisions of 40 CFR 60.5155(a)?

Model Rule, Emission Limits, Emission Standards, and Operating Limits and Requirements

40 CFR 60.5165, What emission limits and standards must I meet and by when?

40 CFR 60.5170, What operating limits and requirements must I meet and by when?

40 CFR 60.5175, How do I establish operating limits if I do not use a wet scrubber, fabric filter, electrostatic precipitator, activated carbon injection, or afterburner, or if I limit emissions in some other manner, to comply with the emission limits?

40 CFR 60.5180, Do the emission limits, emission standards, and operating limits apply during periods of startup, shutdown, and malfunction?

40 CFR 60.5181, How do I establish affirmative defense for exceedance of an emission limit or standard during malfunction?

Model Rule, Initial Compliance Requirements

40 CFR 60.5185, How and when do I demonstrate initial compliance with the emission limits and standards?

40 CFR 60.5190, How do I establish my operating limits?

40 CFR 60.5195, By what date must I conduct the initial air pollution control device inspection and make any necessary repairs?

40 CFR 60.5200, How do I develop a site-specific monitoring plan for my continuous monitoring systems, bag leak detection system, and ash handling system, and by what date must I conduct an initial performance evaluation of my continuous monitoring systems and bag leak detection system?

Model Rule, Continuous Compliance Requirements

40 CFR 60.5205, How and when do I demonstrate continuous compliance with the emission limits and standards?

40 CFR 60.5210, How do I demonstrate continuous compliance with my operating limits?

40 CFR 60.5215, By what date must I conduct annual air pollution control device inspections and make any necessary repairs?

Model Rule, Performance Testing, Monitoring, and Calibration Requirements

40 CFR 60.5220, What are the performance testing, monitoring, and calibration requirements for compliance with the emission limits and standards?

40 CFR 60.5225, What are the monitoring and calibration requirements for compliance with my operating limits?

Model Rule, Recordkeeping and Reporting

40 CFR 60.5230, What records must I keep?

40 CFR 60.5235, What reports must I submit?

Model Rule, Title V Operating Permits

40 CFR 60.5240, Am I required to apply for and obtain a Title V operating permit for my existing SSI unit?

40 CFR 60.5245, When must I submit a Title V permit application for my existing SSI unit?

Model Rule, Definitions

40 CFR 60.5250, What definitions must I know?

TABLES

Table 2 to Subpart MMMM of 40 CFR Part 60, Model Rule, Emission Limits and Standards for Existing Fluidized Bed Sewage Sludge Incineration Units.

Table 3 to Subpart MMMM of 40 CFR Part 60, Model Rule, Emission Limits and Standards for Existing Multiple Hearth Sewage Sludge Incineration Units.

Table 4 to Subpart MMMM of 40 CFR Part 60, Model Rule, Operating Parameters for Existing Sewage Sludge Incineration Units.

Table 5 to Subpart MMMM of 40 CFR Part 60, Model Rule, Toxic Equivalency Factors.

Table 6 to Subpart MMMM of 40 CFR Part 60, Model Rule, Summary of Reporting Requirements for Existing Sewage Sludge Incineration Units.

VA.R. Doc. No. R12-3184; Filed June 13, 2012, 1:38 p.m.

Forms

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

Title of Regulation: **9VAC5-80. Permits for Stationary Sources.**

Contact Information: Debra A. Miller, Policy Planning Specialist, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

FORMS (9VAC5-80)

Air Operating Permit Application, DEQ Form 805 (2/15/96).

Air Permit Application Fee Form - July 1, 2012 (AP Form 5).

EPA Acid Rain Program -- New Unit Exemption Form (40 CFR 72.7) with instructions, EPA Form 7610-19 (rev. 12-94).

EPA Acid Rain Program -- Retired Unit Exemption Form (40 CFR 72.8) with instructions, EPA Form 7610-20 (rev. 12-94).

EPA Acid Rain Program -- Certificate of Representation (40 CFR 72.24) with instructions, EPA Form 7610-1 (rev. 12-94).

EPA Acid Rain Program -- Phase II Permit Application (40 CFR 72.30-72.31) with instructions, EPA Form 7610-16 (rev. 12-94).

EPA Acid Rain Program -- Repowering Extension Plan (40 CFR 72.44) with instructions, EPA Form 7610-17 (rev. 12-94).

VA.R. Doc. No. R12-3277; Filed June 26, 2012, 10:18 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution 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: **9VAC5-151. Regulation for Transportation Conformity (Rev. C12) (amending 9VAC5-151-40, 9VAC5-151-70).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 176(c) of the federal Clean Air Act.

Effective Date: August 15, 2012.

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

Summary:

The U.S. Environmental Protection Agency (EPA) promulgated amendments to the federal transportation regulation on March 14, 2012 (77 FR 14979). Under 40 CFR 51.390, Virginia is required to submit to the EPA a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA at 40 CFR Part 93. In order to implement the federal transportation conformity requirements, the Virginia regulation must reflect the recent revisions made to the federal regulations. This regulation is amended to include the 2012 CFR revisions.

Part III
Criteria and Procedures for Making Conformity Determinations

9VAC5-151-40. General.

The Environmental Protection Agency (EPA) regulations promulgated at 40 CFR Part 93, Subpart A (Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 USC or the Federal Transit Laws) and designated in 9VAC5-151-50 are incorporated by reference into this chapter as amended by the word or phrase substitutions given in 9VAC5-151-60. The 40 CFR section numbers appearing in 9VAC5-151-50 identify the specific provisions incorporated by reference. The specific version of the provisions incorporated by reference shall be that contained in the CFR ~~(2010)~~ (2012) in effect July 1, ~~2010~~ 2012.

9VAC5-151-70. Consultation.

A. The MPOs, LPOs, DEQ, VDOT and VDRPT shall undertake the procedures prescribed in this section for interagency consultation, conflict resolution and public consultation with each other and with local or regional offices of EPA, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, transportation plans, TIPs, and associated conformity determinations required by this chapter.

B. Until EPA grants approval of this chapter, the MPOs, and VDOT and VDRPT, prior to making conformity determinations, shall provide reasonable opportunity for consultation with LPOs, DEQ and EPA on the issues in subdivision D 1 of this section.

C. The provisions of this subsection shall be followed with regard to general factors associated with interagency consultation.

1. Representatives of the MPOs, VDOT, VDRPT, FHWA, and FTA shall undertake an interagency consultation process, in accordance with subdivisions 1 and 3 of this subsection and subsection D of this section, with the LPOs, DEQ and EPA on the development of implementation plans, transportation plans, TIPs, any revisions to the preceding documents, and associated conformity determinations.

a. MPOs, or their designee, shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any amendments or revisions thereto. In the case of nonmetropolitan areas, VDOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the statewide transportation plan, the statewide TIP, and any amendments or revisions thereto. The MPOs shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this chapter for which the MPO is responsible.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare summaries of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on major activities (such as the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs) shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subdivision 1 of this subsection with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subdivision 1 of this subsection, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

2. Representatives of the LPOs, DEQ, and EPA shall undertake an interagency consultation process, in accordance with this subdivision and subdivision 3 of this subsection, with MPOs, VDOT, VDRPT, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, and any revisions to the preceding documents.

a. The DEQ, in conjunction with the LPOs, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of control strategy implementation plan revisions, the credits associated with the list of TCMs in the applicable implementation plan, and any amendments or revisions thereto.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare minutes of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on the development of any control strategy implementation plan revision shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subdivision 1 of this subsection with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subdivision 1 of this subsection, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

3. The specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

a. The MPOs shall be responsible for the following:

(1) Developing metropolitan transportation plans and TIPs in accordance with 23 CFR Part 450 and 49 CFR Part 613 and the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (Public Law No. 109-59).

(2) Adopting conformity determinations in conjunction with the adoption of transportation plans and TIPs and any revisions to the documents.

(3) In cooperation with VDOT, with assistance from VDRPT:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

(c) (i) Developing or approving transportation and related socio-economic data and planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for implementation plan tracking and conformity of transportation plans, TIPs and projects.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and

documentation of timely implementation of TCMs needed for conformity assessments.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

b. The VDOT, with assistance from the VDRPT, shall be responsible for the following:

(1) Developing statewide transportation plans and statewide TIPs.

(2) Providing demand forecasting and on-road mobile source emission inventories.

(3) Circulating draft and final project environmental documents to other agencies.

(4) Convening air quality technical review meetings on specific projects as needed or when requested by other agencies.

(5) In cooperation with the MPOs:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

(c) (i) Developing or approving transportation and related planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for implementation plan tracking and conformity of transportation plans, TIPs and projects.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs need for conformity assessments.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

c. The LPOs shall be responsible for the following:

(1) Developing emissions inventories and budgets.

(2) Developing control strategy implementation plan revisions and maintenance plans.

(3) Providing a staff liaison to the MPOs for conformity and to be responsive to MPO requests for information and technical guidance.

(4) Involving the MPOs, VDOT AND VDRPT continuously in the process.

d. The DEQ shall be responsible for the following:

(1) Developing emissions inventories and budgets.

(2) Tracking attainment of air quality standards, and emission factor model updates.

(3) Gaining final approval at state level for control strategy implementation plan revisions and maintenance plans.

(4) Providing a staff liaison to the LPOs for conformity and to be responsive to LPO requests for information and technical guidance.

(5) Involving the LPOs continuously in the process.

e. The FHWA and FTA shall be responsible for the following:

(1) Assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section.

(2) Providing guidance on conformity and the transportation planning process to agencies in interagency consultation.

f. The EPA shall be responsible for the following:

(1) Reviewing and approving updated motor vehicle emissions factors.

(2) Providing guidance on conformity criteria and procedures to agencies in interagency consultation.

(3) Assuring timely action on conformity analysis and findings and implementation plan revisions.

4. The MPOs, LPOs, DEQ, VDOT and VDRPT may enter into agreements to set forth specific consultation procedures in more detail that are not in conflict with this section.

D. The provisions of this subsection shall be followed with regard to specific processes associated with interagency consultation.

1. An interagency consultation process involving the MPOs, LPOs, DEQ, VDOT, VDRPT, EPA, FHWA, and FTA shall be undertaken for the following:

a. Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emission analyses, including

vehicle miles traveled (VMT) forecasting, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

b. Determining which transportation projects should be considered "regionally significant" for the purpose of regional emission analysis (in addition to those functionally classified as principal arterial or higher; or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

c. Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 and 40 CFR 93.127 should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

d. Making a determination, as required by 40 CFR 93.113(c)(1), whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by VDOT as lead agency, in consultation with the MPOs and VDRPT, and conducted in accordance with subdivisions C 1 and 3 of this section. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

e. Notifying all parties to the consultation process of transportation plan or TIP amendments that merely add or delete exempt projects listed in 40 CFR 93.126 or 40 CFR 93.127, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

f. Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by ~~40 CFR 93.109(n)(2)(iii)~~ 40 CFR 93.109(g)(2)(iii), to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

g. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or control strategy implementation plan revisions, or making conformity determinations, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

2. An interagency consultation process in accordance with subsection C of this section involving the MPOs, LPOs, DEQ, VDOT, and VDRPT shall be undertaken for the following:

a. Evaluating events that may trigger new conformity determinations in addition to those triggering events established by 40 CFR 93.104, to be initiated by VDOT, in consultation with the MPOs and DEQ, and conducted in accordance with subdivisions C 1 and 3 of this section.

b. Consulting on emissions analysis for transportation activities that cross the borders of MPOs or nonattainment areas, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subdivisions C 1 and 3 of this section.

3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with subdivisions C 1 and 3 of this section involving the MPOs and VDOT shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subdivisions C 1 and 3 of this section.

4. To assure that plans for construction of regionally significant projects that are not FHWA or FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 USC or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed, an interagency consultation process shall be undertaken, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section involving the MPO, VDOT, VDRPT, and recipients of funds designated under Title 23 USC or the Federal Transit Act.

5. An interagency consultation process in accordance with subsections C 1 and 3 of this section involving the MPOs and other recipients of funds designated under Title 23 USC or the Federal Transit Act shall be undertaken for developing assumptions regarding the location and design concept and scope of projects that are disclosed to the MPO as required by subdivision 4 of this subsection but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.122, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section.

6. An interagency consultation process in accordance with subdivisions C 1 and 3 of this section shall be undertaken for the design, schedule, and funding of research and data

collection efforts and model developments in regional transportation (such as household or travel transportation surveys) to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subdivisions C 1 and 3 of this section.

E. The provisions of this subsection shall be followed with regard to conflict resolution associated with interagency consultation.

1. Unresolved conflicts among state agencies, or between state agencies and the MPO(s), or among MPO member jurisdictions, shall be identified by an MPO or agency in writing to the other MPO, DEQ, VDOT, or VDRPT, with copies to FHWA, FTA and EPA. The MPO's or agency's written notice shall:

a. Explain the nature of the conflict;

b. Review options for resolving the conflict;

c. Describe the MPO's or agency's proposal to resolve the conflict;

d. Explain the consequences of not reaching a resolution; and

e. Request that comments on the matter be received within two weeks.

2. If the above action does not result in a resolution to the conflict, either of the following shall apply:

a. If the conflict is between the MPOs or between the MPO(s) and VDOT or VDRPT or both, then the parties shall follow the coordination procedures of 23 CFR 450.210.

b. If the conflict is between the MPO(s) or VDOT or VDRPT and the DEQ and the conflict can not be resolved by the affected agency heads, then the DEQ Director may elevate the conflict to the Governor in accordance with the procedures of subdivision 3 of this section. If the DEQ Director does not appeal to the Governor within 14 days as provided in subdivision 3 a of this subsection, the MPO or VDOT or VDRPT may proceed with its final conformity determination.

3. Appeals to the Governor by the DEQ Director under the provisions of subdivision 2 b of this subsection shall be in accordance with the following procedures:

a. The DEQ Director has 14 calendar days to appeal to the Governor after the MPO(s) or VDOT or VDRPT has notified the DEQ Director of the agency's or MPO's resolution of DEQ's comments. The notification to the DEQ Director shall be in writing and shall be hand-delivered. The 14-day clock shall commence when VDOT or VDRPT or the MPO has confirmed receipt by the DEQ Director of the agency's or MPO's resolution of the DEQ's comments.

b. The appeal to the Governor shall consist of the following: the conformity determination and any supporting documentation; DEQ's comments on the determination; the MPO(s) or VDOT or VDRPT resolution of DEQ's comments; and DEQ's appeal document.

c. The DEQ shall provide a complete appeal package to the MPO, VDOT and VDRPT within 24 hours of the time the appeal is filed with the Governor's Office.

d. If the Governor does not concur with the conformity determination, he may direct revision of the applicable implementation plan, revision of the planned program of projects, revision of the conformity analysis or any combination of the preceding.

e. If the Governor concurs with the conformity determination made by the MPO and VDOT, the MPO and VDOT may proceed with the final conformity determination.

f. The Governor may delegate his role in this process, but not to the agency head or staff of DEQ, VDOT or VDRPT or the Commonwealth Board of Transportation.

4. Nothing in this section shall prevent the state agencies and MPOs from making efforts upon their own initiative to obtain mutual conflict resolution through conference or other appropriate means.

F. The provisions of this subsection shall be followed with regard to public consultation.

1. The MPOs shall establish a proactive involvement process that provides reasonable opportunity for review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the MPO at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR 450.316(a).

2. The MPOs shall specifically address in writing public comments regarding plans for a regionally significant project, not receiving FHWA or FTA funding or approval, and how the project is properly reflected in the emission analysis supporting a proposed conformity finding for a transportation plan or TIP.

3. The MPOs shall also provide an opportunity for public involvement in conformity determinations for projects where otherwise required by law.

VA.R. Doc. No. R12-3248; Filed June 13, 2012, 1:41 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Virginia Waste

Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees (amending 9VAC20-90-113, 9VAC20-90-114, 9VAC20-90-115).**

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: Debra Miller, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

Summary:

This action removes the cap on total fees collected from certain solid waste facilities in conformance with the Department of Environmental Quality's appropriations under the 2012 Appropriation Act.

9VAC20-90-113. Annual fee calculation for incinerators and energy recovery facilities.

A. General. All persons operating an incinerator or energy recovery facility that is permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar. The 2010 base fee rate is $0.055 per ton.

B. Fee calculation. Annual tonnage will be determined from the total amount of waste reported as having been incinerated on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-81-80). Annual fees shall be calculated by multiplying the number of tons of waste incinerated by the fee rate set forth in subsection A of this section adjusted annually by the change in the Consumer Price Index. The Consumer Price Index is the Consumer Price Index for all-urban consumers for the 12-month period ending on April 30 of the calendar year preceding the year the annual fee is due. The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0.

C. Weight/volume conversions. For facilities required to pay annual fees based on the tonnage of the waste incinerated, the annual fee shall be based on the accurate weight of waste. If scales are unavailable, the volume of the waste incinerated by the facility must be multiplied by 0.50 tons per cubic yard to determine the weight of the waste incinerated. If the volume of waste is used to determine the tonnage of waste incinerated, accurate and complete records of the waste received and managed must be maintained in addition to the calculated weight records described in this part. These records must be maintained onsite throughout the life of the facility and made available to the department upon request.

D. Emergency. The director may waive or reduce annual fees assessed during a state of emergency or for waste resulting from an emergency response action. A facility operator may request a determination if a given volume of waste incinerated in a given calendar year qualifies for a waived or reduced fee by submitting documentation of the emergency to the regional office where the facility is located. The request will provide the name and permit number of the facility, a facility contact, the nature of the emergency or response action, a description of the waste, and an accurate accounting of the type and tonnage of waste managed as a result of the emergency. Requests for a determination by the director must be submitted by March 31 of the year following the emergency coincident with the solid waste information assessment report. A separate request shall be provided for each year if the emergency lasts for multiple years.

E. Annual fee discounts for environmental excellence program participants are set out in 9VAC20-90-117.

F. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution, or contract for solid waste processing or disposal operations at the facility.

G. Closure. Facilities that remove all waste materials at the time of closure and are subject only to closure requirements are subject to payment of the annual fee if they were operating at any time during the calendar year.

~~H. The total annual sum of annual fees and permit application fees collected by the board from sanitary landfills and other nonhazardous solid waste facilities shall not exceed 60% of the direct costs of (i) processing an application to issue, reissue, amend, or modify permits; and (ii) performing inspections and enforcement actions necessary to assure compliance with permits issued for any sanitary landfill and other facility for the disposal, treatment, or storage of nonhazardous solid waste. The director shall take whatever action is necessary to ensure that this limit is not exceeded.~~

9VAC20-90-114. Annual fee calculation for sanitary landfills, noncaptive industrial landfills, and construction and demolition debris landfills.

A. General. All persons operating a sanitary landfill, noncaptive industrial landfill, or a construction and demolition debris landfill permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar. The 2010 base fee rate is $0.115 per ton.

B. Fee calculation. Annual tonnage will be determined from the total amount of waste reported as having been landfilled on Form DEQ 50-25 for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-81-80). Annual fees shall be calculated by multiplying the tons of

waste landfilled (excluding any ash landfilled that was generated by incinerators and energy recovery facilities located in Virginia previously assessed a fee under 9VAC20-90-113) by the fee rate set forth in subsection A of this section adjusted annually by the change in the Consumer Price Index. The Consumer Price Index is the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year preceding the year the annual fee is due. The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0. Landfills receiving ash generated by incinerators and energy recovery facilities located in Virginia previously assessed a fee under 9VAC20-90-113 shall report to the board the amount of ash received from individual facilities on the Solid Waste Information Reporting Table, Form DEQ 50-25. The tonnage of ash identified as being generated by incinerators and energy recovery facilities previously assessed a fee under 9VAC20-90-113 shall be exempted from the annual fee assessed for sanitary landfills, construction and demolition debris landfills, and noncaptive industrial landfills.

C. Weight/volume conversions. For facilities required to pay annual fees based on the tonnage of the waste landfilled, the annual fee shall be based on the accurate weight of waste. If scales are unavailable, the volume of the waste landfilled by the facility must be multiplied by 0.50 tons per cubic yard to determine the weight of the waste landfilled. If the volume of waste is used to determine the tonnage of waste landfilled, accurate and complete records of the waste received and managed must be maintained in addition to the calculated weight records described in this part. These records must be maintained onsite throughout the life of the facility and made available to the department upon request.

D. Emergency. The director may waive or reduce annual fees assessed during a state of emergency or for waste resulting from an emergency response action. A facility operator may request a determination if a given volume of waste landfilled in a given calendar year qualifies for a waived or reduced fee by submitting documentation of the emergency to the regional office where the facility is located. The request will provide the name and permit number of the facility, a facility contact, the nature of the emergency or response action, a description of the waste, and an accurate accounting of the type and tonnage of waste managed as a result of the emergency. Requests for a determination by the director must be submitted by March 31 of the year following the emergency coincident with the solid waste information assessment report. A separate request shall be provided for each year if the emergency lasts for multiple years.

E. Annual fee discounts for environmental excellence program participants are set out in 9VAC20-90-117.

F. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution, or contract for solid waste processing or disposal operations at the facility.

G. Closure. Facilities that remove all waste materials at the time of closure and are subject only to closure requirements are subject to payment of the annual fee if they were operating at any time during the calendar year.

H. Transition to post-closure care. Landfills entering post-closure care will pay an annual fee as follows:

1. If the landfill received waste during the previous calendar year, the annual fee will be based on the amount of waste landfilled for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-81-80); or

2. If the landfill did not receive waste during the previous calendar year and began post-closure care during the previous calendar year as provided in 9VAC20-81-170, the landfill shall be subject to the post-closure care annual fee.

~~I. The total annual sum of annual fees and permit application fees collected by the board from sanitary landfills and other nonhazardous solid waste facilities shall not exceed 60% of the direct costs of (i) processing an application to issue, reissue, amend, or modify permits; and (ii) performing inspections and enforcement actions necessary to assure compliance with permits issued for any sanitary landfill and other facility for the disposal, treatment, or storage of nonhazardous solid waste. The director shall take whatever action is necessary to ensure that this limit is not exceeded.~~

9VAC20-90-115. Annual fee calculation for other types of facilities.

A. General. All persons operating a composting facility, regulated medical waste facility, materials recovery facility, transfer station, landfill in post-closure care, or active captive industrial landfill that is permitted under the regulations outlined in 9VAC20-90-50 shall submit annual fees according to the procedures provided in 9VAC20-90-65. Annual fees shall be calculated using the procedures provided in subsection B of this section. Fees shall be rounded to the nearest dollar. The 2010 base fee rates are provided in Table 4.1 of 9VAC20-90-130. Active captive industrial landfills shall submit Form DEQ 50-25 to the department to indicate if the landfill is a small landfill or large landfill based on the total amount of waste landfilled during the preceding calendar year.

B. Fee calculation. Annual fees shall be the fee rate set forth in subsection A of this section adjusted annually by the change in the Consumer Price Index. The Consumer Price Index is the Consumer Price Index for all-urban consumers for the 12-month period ending on April 30 of the calendar year preceding the year the annual fee is due. The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0.

C. Weight/volume conversions. For facilities required to pay annual fees based on the tonnage of the waste landfilled, the annual fee shall be based on the accurate weight of waste. If scales are unavailable, the volume of the waste landfilled by the facility must be multiplied by 0.50 tons per cubic yard to determine the weight of the waste landfilled. If the volume of waste is used to determine the tonnage of waste landfilled, accurate and complete records of the waste received and managed must be maintained in addition to the calculated weight records described in this part. These records must be maintained onsite throughout the life of the facility and made available to the department upon request.

D. Emergency. The director may waive or reduce annual fees assessed during a state of emergency or for waste resulting from an emergency response action. A facility operator may request a determination if a given volume of waste landfilled in a given calendar year qualifies for a waived or reduced fee by submitting documentation of the emergency to the regional office where the facility is located. The request will provide the name and permit number of the facility, a facility contact, the nature of the emergency or response action, a description of the waste, and an accurate accounting of the type and tonnage of waste managed as a result of the emergency. Requests for a determination by the director must be submitted by March 31 of the year following the emergency coincident with the solid waste information assessment report. A separate request shall be provided for each year if the emergency lasts for multiple years.

E. Annual fee discounts for environmental excellence program participants are set out in 9VAC20-90-117.

F. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

G. Closure. Facilities that remove all waste materials at the time of closure and are subject only to closure requirements are subject to payment of the annual fee if they were operating at any time during the calendar year.

H. Transition to post-closure care. Landfills entering post-closure care will pay an annual fee as follows:

1. If the landfill received waste during the previous calendar year, the annual fee will be based on the amount of waste landfilled for the preceding year pursuant to the Waste Information Assessment Program (9VAC20-81-80); or

2. If the landfill did not receive waste during the previous calendar year and began post-closure care during the previous calendar year as provided in 9VAC20-81-170, the landfill shall be subject to the post-closure care annual fee.

~~I. The total annual sum of annual fees and permit application fees collected by the board from sanitary landfills and other nonhazardous solid waste facilities shall not exceed 60% of the direct costs of (i) processing an application to issue, reissue, amend, or modify permits; and (ii) performing inspections and enforcement actions necessary to assure compliance with permits issued for any sanitary landfill and other facility for the disposal, treatment, or storage of nonhazardous solid waste. The director shall take whatever action is necessary to ensure that this limit is not exceeded.~~

VA.R. Doc. No. R12-3190; Filed June 19, 2012, 9:40 a.m.

Final Regulation

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

Title of Regulation: **9VAC20-130. Solid Waste Planning and Recycling Regulations (amending 9VAC20-130-165).**

Statutory Authority: § 10.1-1411 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: Debra Miller, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

Summary:

The amendments modify the frequency for submittal of the recycling data report for each solid waste planning unit or locality with a population of 100,000 or less to once every four years.

9VAC20-130-165. ~~Annual recycling~~ Recycling data reporting.

~~Every~~ A. Each solid waste planning unit or locality with a population of greater than 100,000 persons according to the most recent United States census shall prepare and submit a recycling survey report to the department by April 30 of each year ~~the data and calculations required in 9VAC20-130-125 A, B, and C~~.

B. Each solid waste planning unit or locality with a population of 100,000 or less according to the most recent United States census shall prepare and submit a recycling survey report to the department once every four years. These recycling survey reports shall include only information for the most recent single year. The first reports submitted pursuant to this subsection shall be submitted by April 30, 2013, for the reporting year ending December 31, 2012. Thereafter, recycling survey reports shall be submitted by April 30 of every fourth year (i.e., 2017, 2021, 2025, and so on).

C. The recycling survey report required by subsections A and B of this section shall include the data and calculations required in 9VAC20-130-125 A, B, and C.

VA.R. Doc. No. R12-3188; Filed June 19, 2012, 9:41 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC20-20. Schedule of Fees for Hazardous Waste Facility Site Certification (amending 9VAC20-20-110).**

9VAC20-50. Hazardous Waste Facility Siting Criteria (amending 9VAC20-50-100).

9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-490, 9VAC20-60-1280, 9VAC20-60-1284).

9VAC20-70. Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities (amending 9VAC20-70-290).

9VAC20-160. Voluntary Remediation Regulations (amending 9VAC20-160-60).

9VAC20-170. Transportation of Solid and Medical Wastes on State Waters (amending 9VAC20-170-190, 9VAC20-170-195, Appendix III, Appendix VIII).

Statutory Authority: § 10.1-1454.1 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: Debra Miller, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

Summary:

The regulatory action updates the mailing address and telephone numbers for the Department of Environmental Quality and Marine Resources Commission.

9VAC20-20-110. Manner of payment.

Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box ~~10150~~ 1104, Richmond, VA ~~23240~~ 23218. When the department is able to accept electronic payments, payments may be submitted electronically.

Part IV
Related Permits and Reviews

9VAC20-50-100. Additional agency approval.

To avoid duplication to the maximum extent feasible with existing agencies and their areas of responsibility, related agency approvals are listed below as notification to the applicant that these permits and reviews may apply in accordance with the type of facility proposed.

A. Permits.

1. Hazardous waste facility management.

a. Regulatory agency:

Virginia Waste Management Board.

b. State permit required:

Facility management or transportation.

c. Statutory authority:

(1) Chapter 11.1 (§ 10.1-1182 et seq.) of Title 10.1 of the Code of Virginia and the Virginia Waste Management Act, Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

(2) Hazardous Waste Management Regulations, 9VAC20-60.

d. Contact:

Department of Environmental Quality

P.O. Box ~~10009~~ 1105

Richmond, VA ~~23240-0009~~ 23218

(804) 698-4000

2. Air emissions.

a. Regulatory agency:

State Air Pollution Control Board.

b. State permit required:

Stationary sources

Hazardous pollutants

Open burning

c. Statutory authority, rules and regulations:

(1) Virginia Air Pollution Control Law.

(2) Federal Clean Air Act (42 USC 7401 et seq.) and amendments.

(3) Hazardous Air Pollutant Sources, 9VAC5-60 and Permits for Stationary Sources, 9VAC5-80.

d. Contact:

Department of Environmental Quality

P.O. Box ~~10009~~ 1105

Richmond, VA ~~23240-0009~~ 23218

(804) 698-4000

3. Discharges into state waters.

a. Regulatory agency:

State Water Control Board.

b. State discharge permit required:

(1) Virginia Pollutant Discharge Elimination System (NPDES).

(2) No discharge certificate.

c. Statutory authority, rules and regulations:

(1) Federal Water Pollution Control Act Amendments of 1972 (33 USC § 1251 et seq.).

(2) State Water Control Law, (§ 62.1-44.2 et seq. of the Code of Virginia).

d. Contact:

Department of Environmental Quality

P.O. Box ~~10009~~ 1105

Richmond, VA ~~23240-0009~~ 23218

(804) 698-4000

4. Land disturbance.

a. Regulatory agency:

Virginia Soil and Water Conservation Board or local government, or both.

b. State requirement:

Erosion and sediment control plan.

c. Statutory authority, rules and regulations:

(1) Erosion and sediment control law (§§ 10.1-560 et seq. of the Code of Virginia).

(2) Virginia Erosion and Sediment Control Handbook.

d. Contact:

Department of Conservation and Recreation

203 Governor Street, Suite 213

Richmond, VA 23219-2094

(804) 786-1712

5. Wetlands, subaqueous lands, and dunes.

a. Regulatory agencies:

Virginia Marine Resources Commission (VMRC) (Clearinghouse for permits)

Local wetlands boards

Virginia Department of Environmental Quality (VDEQ)

U.S. Army Corps of Engineers (USACE)

b. Permit required:

VMRC and local wetland boards: Use or development of any wetland within Tidewater, Virginia

VMRC: Coastal Dunes

VMRC, VDEQ and USACE: Tidal Wetlands and Subaqueous Land

VDEQ and USACE: Nontidal Wetlands

USACE: Activities in the navigable waters of the United States, degradation of the quality of water, and transportation and dumping of dredged material.

c. Statutory authority, rules and regulations:

(1) Virginia Wetlands Act (§ 28.2-1300 et seq. of the Code of Virginia.)

(2) Virginia Water Control Law (§§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.)

(3) Local wetland zoning ordinances.

(4) Federal Water Pollution Control Act (Clean Water Act, 33 USC § 1251 et seq.) §§ 401 and 404

(5) Rivers and Harbors Act of 1894 (33 USC § 1371).

(6) Marine Protection Research and Sanctuary Act (16 USC §§ 1431-1434; 33 USC §§ 1401, 1402, 1411-1421, 1441-1444).

d. Contact:

(1) Assistant Commissioner for Habitat Management

Marine Resources Commission

~~P.O. Box 756~~ 2600 Washington Avenue, 3rd Floor

Newport News, VA 23607

~~(804) 247-2200~~ (757) 247-2200

(2) Department of Environmental Quality

P.O. Box ~~10009~~ 1105

Richmond, VA ~~23240-0009~~ 23218

(804) 698-4000

(3) District Engineers

U.S. Army Corps of Engineers

Norfolk District

803 Front Street

Norfolk, VA 23510

B. Reviews. Applications for permits may result in a review and comment process by state agencies. Such reviews may include comments concerning historic landmarks, archaeological sites, caves, best management practices, fisheries, and parks and recreation. Further information on review procedures can be obtained by contacting, Department of Environmental Quality, P.O. Box ~~10009~~ 1105, Richmond, VA, ~~23240~~ 23218; or (804) 698-4000.

9VAC20-60-490. Discharges.

A. The transporter shall comply with all federal and Commonwealth requirements relative to discharges.

B. 1. In the event of a discharge or spill of hazardous wastes, the transporter shall take appropriate emergency actions to protect human life, health, and the environment and shall notify appropriate local authorities. Upon arrival on the scene of state or local emergency or law-enforcement personnel, the transporter shall carry out such actions as required of him.

2. The transporter shall clean up any hazardous waste discharge that occurs during transportation and shall take such action as is required by the federal government, the Virginia Department of Emergency Management, the director, or local officials, so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

3. If the discharge of hazardous waste occurs during transportation and the director or his designee determines that immediate removal of the waste is necessary to protect human health or the environment, an emergency transporter permit may be issued in accordance with 9VAC20-60-450 H.

4. The disposal of the discharged materials shall be done in a manner consistent with this chapter and other applicable Virginia and federal regulations.

C. Discharges by air, rail, highway, or water (nonbulk) transporters.

1. In addition to requirements contained in preceding parts, an air, rail, highway or water (nonbulk) transporter who has discharged hazardous waste shall give notice at the earliest practicable moment to agencies indicated in 9VAC20-60-490 C 2 after each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which as a direct result of the discharge of the hazardous wastes:

a. A person is killed;

b. A person receives injuries requiring his hospitalization;

c. Estimated carrier or other property damage exceeds $50,000;

d. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material;

e. Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

f. A situation exists of such a nature that, in the judgment of the transporter, it should be reported in accordance with 9VAC20-60-490 C 2 even though it does not meet the above criteria (e.g., continuing danger of life exists at the scene of the incident), or as required by 49 CFR 171.15.

2. The notice required by 9VAC20-60-490 C 1 shall be given to:

a. The National Response Center, U.S. Coast Guard, at 800-424-8802 (toll free) or at 202-267-2675 (toll call); and

b. The Virginia Department of Emergency Management at 800-468-8892 (toll free) or 804-674-2400 (Richmond local area). In a case of discharges affecting state waters, the notice shall also be given to the Pollution Response Program (PreP) Coordinator in the appropriate regional office of the department.

3. When notifying as required in 9VAC20-60-490 C 1, the notifier shall provide the following information:

a. Name of person reporting the discharge and his role in the discharge;

b. Name, telephone number and address of the transporter;

c. Name, telephone number and address of the generator;

d. Telephone number where the notifier can be contacted;

e. Date, time and location of the discharge;

f. Type of incident, nature of hazardous waste involvement, and whether a continuing danger to life exists at the scene;

g. Classification, name and quantity of hazardous waste involved; and

h. The extent of injuries, if any.

4. Within 15 calendar days of the discharge of any quantity of hazardous waste, the transporter shall send a written report on DOT Form F5800.1 in duplicate to the Chief, Information System Division, Transportation Programs Bureau, Department of Transportation, Washington, D.C. 20590. Two copies of this report will also be filed with the Department of Environmental Quality, Post Office Box ~~10009~~ 1105, 629 East Main Street, Richmond, Virginia ~~23240-0009~~ 23218.

5. In reporting discharges of hazardous waste as required in 9VAC20-60-490 C 4, the following information shall be furnished in Part H of the DOT Form F5800.1 in addition to information normally required:

a. An estimate of the quantity of the waste removed from the scene;

b. The name and address of the facility to which it was taken; and

c. The manner of disposition of any unremoved waste.

A copy of the hazardous waste manifest shall be attached to the report.

D. Discharges by water (bulk) transporters.

1. A water (bulk) transporter shall, as soon as he has knowledge of any discharge of hazardous waste from the vessel, notify, by telephone, radio telecommunication or a similar means of rapid communication, the office designated in 9VAC20-60-490 C 2.

2. If notice as required in 9VAC20-60-490 D 1 is impractical, the following offices may be notified in the order of priority:

a. The government official predesignated in the regional contingency plan as the on-scene coordinator. Such regional contingency plan for Virginia is available at the office of the 5th U.S. Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705;

b. Commanding officer or officer-in-charge of any U.S. Coast Guard unit in the vicinity of the discharge; or

c. Commander of the 5th U.S. Coast Guard District.

3. When notifying the notifier shall provide the following information:

a. Name of person reporting the discharge and his role in the discharge;

b. Name, telephone number and address of the transporter;

c. Name, telephone number and address of the generator;

d. Telephone number so the notifier can be contacted;

e. Date, time, location of the discharge;

f. Type of incident and nature of hazardous waste involvement and whether a continuing danger to life exists at the scene;

g. Classification, name and quantity of hazardous waste involved; and

h. The extent of injuries, if any.

E. Discharges at fixed facilities. Any transporter responsible for the release of a hazardous material (as defined in Part I (9VAC20-60-12 et seq.) of this chapter) from a fixed facility (e.g., transfer facility) which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative officers (or their designees) of the local governments of the jurisdictions in which the release occurs as well as the department.

9VAC20-60-1280. Payment of application fees.

A. Due date.

1. Except as specified in subdivision 2 of this subsection, all permit application fees are due on the day of application and must accompany the application.

2. All holders of a Virginia HWM facility permit issued prior to January 1, 1988, shall submit the application fees as required by the conditions specified in that permit.

B. Method of payment. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box ~~10150~~ 1104, Richmond, VA ~~23240~~ 23218. When the department is able to accept electronic payments, payments may be submitted electronically.

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Late payment. No applications will be deemed to be complete (see 9VAC20-60-270) until the department receives proper payment.

9VAC20-60-1284. Payment of annual fees.

A. Due date. The operator of the treatment, storage, or disposal facility and each large quantity generator shall pay the correct fees to the Department of Environmental Quality. The department may bill the facility or generator for amounts due or becoming due in the immediate future. All payments are due and shall be received by the department no later than the first day of October 2004 (for the 2003 annual year), and no later than the first day of October of each succeeding year thereafter (for the preceding annual year) unless a later payment date is specified by the department in writing.

B. Method of payment.

1. The operator of the facility or the large quantity generator shall send a payment transmittal letter to the Department of Environmental Quality. The letter shall contain the name and address of the facility or generator, the Federal Identification Number (FIN) for the facility or generator, the amount of the payment enclosed, and the period that the payment covers. With the transmittal letter shall be payment in full for the correct fees due for the annual period. A copy of the transmittal letter only shall be maintained at the facility or the site where the hazardous waste was generated.

2. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box ~~10150~~ 1104, Richmond, VA ~~23240~~ 23218. When the department is able to accept electronic payments, payments may be submitted electronically.

C. Late payment and incomplete payments. In addition to any other provision provided by statute for the enforcement of these regulations, interest may be charged for late payments at the underpayment rate set out by the U.S. Internal Revenue Service established pursuant to § 6621(a)(2) of the Internal Revenue Code. This rate is prescribed in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee may also be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality is entitled to all remedies available under the Code of Virginia in collecting any past due amount and may recover any attorney's fees and other administrative costs incurred in pursuing and collecting any past due amount.

9VAC20-70-290. Wording of financial mechanisms.

A. Wording of trust agreements.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (State) (corporation, partnership, association, proprietorship), the "Grantor," and (name of corporate trustee), a (State corporation) (national bank), the "Trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that the owner or operator of a (solid) (regulated

medical) (yard) waste (transfer station) (receiving) (management) facility must provide assurance that funds will be available when needed for (closure, post-closure care, or corrective action) of the facility,

Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial assurance for the facility identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

A. The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

B. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

C. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facility and Cost Estimates. This Agreement pertains to facility(ies) and cost estimates identified on attached Schedule A.

(NOTE: On Schedule A, for each facility list, as applicable, the permit number, name, address, and the current closure, post-closure, corrective action cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement.)

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality, Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Commonwealth of Virginia's Department of Environmental Quality.

Section 4. Payment for (Closure, Post-Closure Care, or Corrective Action). The Trustee will make such payments from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of (closure, post-closure care, corrective action) of the facility covered by this Agreement. The Trustee will reimburse the Grantor or other persons as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the Fund for (closure, post-closure care, corrective action) expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the fund will consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of any enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other owner or operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund; and

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., of one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustees may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other dispositions;

B. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United State government, or any agency or instrumentality thereof with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

D. To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Part IX.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director of the Department of Environmental Quality, Commonwealth of Virginia, to the

Trustee will be in writing, signed by the Director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee is not required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

Section 20. Interpretation. As used in the Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement will not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 9VAC20-70-290 A of the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, as such regulations were constituted on the date shown immediately below.

(Signature of Grantor)

By: (Title) (Date)

Attest:

(Title) (Date)

(Seal)

(Signature of Trustee)

By

Attest:

(Title)

(Seal) (Date)

Certification of Acknowledgment:

COMMONWEALTH OF VIRGINIA

STATE OF _____

CITY/COUNTY OF _____

On this date, before me personally came (owner or operator) to me known, who being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

B. Wording of surety bond guaranteeing performance or payment.

(NOTE: instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

PERFORMANCE OR PAYMENT BOND

Date bond executed: _____

Effective date: _____

Principal: (legal name and business address) _____

Type of organization: (insert "individual," "joint venture," "partnership," or "corporation") _____

State of incorporation: _____

Surety: (name and business address) _____

Name, address, permit number, if any, and (closure, post-closure care, or corrective action) cost estimate for the facility: _____

Penal sum of bond: $_____

Surety's bond number: _____

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a permit from the Department of Environmental Quality, Commonwealth of Virginia, in order to own or operate the (solid, regulated medical, yard) waste management facility identified above, and

Whereas, said Principal is required to provide financial assurance for (closure, post-closure care, corrective action) of the facility as a condition of the permit or an order issued by the department,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform (closure, post-closure care, corrective action), whenever required to do so, of the facility identified above in accordance with the order or the (closure, post-closure care, corrective action) plan submitted to receive said permit and other requirements of said permit as such plan and permit may be amended or renewed pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall faithfully perform (closure, post-closure care, corrective action) following an order to begin (closure, post-closure care, corrective action) issued by the Commonwealth of Virginia's Department of Environmental Quality or by a court, or following a notice of termination of the permit,

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 90 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the management facility identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must either perform (closure, post-closure care, corrective action) in accordance with the approved plan and other permit requirements or forfeit the (closure, post-closure care, corrective action) amount guaranteed for the facility to the Commonwealth of Virginia.

Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of an order to begin (closure, post-closure care, corrective action), the Surety must either perform (closure, post-closure care, corrective action) in accordance with the order or forfeit the amount of the (closure, post-closure care, corrective action) guaranteed for the facility to the Commonwealth of Virginia.

The Surety hereby waives notification of amendments to the (closure, post-closure care, corrective action) plans, orders, permit, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

For purposes of this bond, (closure, post-closure care, corrective action) shall be deemed to have been completed when the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines that the conditions of the approved plan have been met.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but the obligation of the Surety hereunder shall not exceed the amount of said penal sum unless the Director of the Department of Environmental Quality, Commonwealth of Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of interest pursuant to § 6.2-302 of the Code of Virginia.

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the director as shown on the signed return receipt; or (2) while an enforcement action is pending.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and I hereby certify that the wording of this surety bond is identical to the wording specified in 9VAC20-70-290 B of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Principal

Signature(s): _____

Name(s) and Title(s): (typed)_____

Corporate Surety

Name and Address: _____

State of Incorporation: _____

Liability Limit: $___

Signature(s): _____

Name(s) and Title(s): (typed)_____

Corporate Seal:

C. Wording of irrevocable standby letter of credit.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director

Department of Environmental Quality

P.O. Box ~~10009~~ 1105

Richmond, Virginia ~~23240-0009~~ 23218

Dear (Sir or Madam):

We hereby establish our Irrevocable Letter of Credit No..... in your favor at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars $____, available upon presentation of

1. Your sight draft, bearing reference to this letter of credit No ____ together with

2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following amounts are included in the amount of this letter of credit: (Insert the facility permit number, if any, name and address, and the closure, post-closure care, corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this letter of credit.)

This letter of credit is effective as of (date) and will expire on (date at least one year later), but such expiration date will be automatically extended for a period of (at least one year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and (owner or operator's name) by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt or while a compliance procedure is pending, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution) and I hereby certify that the wording of this letter of credit is identical to the wording specified in 9VAC20-70-290 C of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

Attest:

(Print name and title of official of issuing institution) (Date)

(Signature) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," of "the Uniform Commercial Code.")

D. Assignment of certificate of deposit account.

City _____ _____, 20___

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality, Commonwealth of Virginia, and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

() If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of _____ Dollars ($_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

Additional Security. This assignment shall secure the payment of any financial obligation of the (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and permit number) located (physical address)

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner/operator) to the Virginia Department of Environmental Quality for ("closure" "post closure care" "corrective action") at the (facility name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund ("closure" "post closure care" "corrective action") at the (facility name) or in the event of (owner or operator's) failure to comply with the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities, 9VAC20-70. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. (The undersigned) agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

SEAL

(Owner)

(print owner's name)

SEAL

(Owner)

(print owner's name)

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of $ _____ for the benefit of the Department of Environmental Quality.

() If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

(Signature) (Date)

(print name)

(Title)

E. Wording of certificate of insurance.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"): _____

_____

Name and Address of Insured (herein called the "Insured"): _____

_____

_____

Facilities Covered: (List for each facility: Permit number (if applicable), name, address and the amount of insurance for closure, post-closure care, or corrective action. (These amounts for all facilities covered shall total the face amount shown below.))

Face Amount: $___

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure," "post-closure care," "corrective action") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 9VAC20-70-190 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ("Regulations") (9VAC20-70), as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the

policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 9VAC20-70-290 E of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(Date)

F. Wording of letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

Director

Department of Environmental Quality

P.O. Box ~~10009~~ 1105

Richmond, Virginia ~~23240-0009~~ 23218

Dear (Sir, Madam):

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in 9VAC20-70-200 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70) ("Regulations").

(Fill out the following four paragraphs regarding solid waste, regulated medical waste, yard waste composting, hazardous waste, underground injection (regulated under the federal program in 40 CFR Part 144, or its equivalent in other states), petroleum underground storage (9VAC25-590), above ground storage facilities (9VAC25-640) and PCB storage (regulated under 40 CFR Part 761) facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its name, address, permit number, if any, and current closure, post-closure care, corrective action or any other environmental obligation cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, corrective action or other environmental obligation.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the corporate test specified in 9VAC20-70-200 or its equivalent in other applicable regulations. The current cost estimates covered by the test are shown for each facility:

2. This firm guarantees, through the corporate guarantee specified in 9VAC20-70-220, the financial assurance for the following facilities owned or operated by subsidiaries of this firm. The current cost estimates so guaranteed are shown for each facility:

3. This firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a financial test. The current cost estimates covered by such a test are shown for each facility:

4. This firm is the owner or operator of the following waste management facilities for which financial assurance is not demonstrated through the financial test or any other financial assurance mechanism. The current cost estimates for the facilities which are not covered by such financial assurance are shown for each facility:

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

1) Sum of current closure, post-closure care, corrective action or other environmental obligations cost estimates (total of all cost estimates shown in the four paragraphs above.)	$_____
2) Tangible net worth*	$_____
3) Total assets located in the United States*	$_____

	YES	NO
Line 2 exceeds line 1 by at least $10 million?	____	____
Line 3 exceeds line 1 by at least $10 million?	____	____

(Fill in Alternative I if the criteria of 9VAC20-70-200 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC20-70-200 1 a (2) are used. Fill in Alternative III if the criteria of 9VAC20-70-200 1 a (3) are used.)

ALTERNATIVE I

Current bond rating of this firm's senior unsubordinated debt and name of rating service

Date of issuance of bond

Date of maturity of bond

ALTERNATIVE II

4) Total liabilities* (if any portion of the closure, post-closure care, corrective action or other environmental obligations cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that	$_____

amount to line 5.)

5) Net worth* $_____

Is line 4 divided by line 5 less than 1.5? YES NO

ALTERNATIVE III

6) Total liabilities* $_____

7) The sum of net income plus depreciation, depletion, and amortization minus $10 million* $_____

Is line 7 divided by line 6 less than 0.1? YES NO

I hereby certify that the wording of this letter is identical to the wording in 9VAC20-70-290 F of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

G. Wording of the local government letter from chief financial officer.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.)

LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of (insert: name and address of local government owner or operator, or guarantor). This letter is in support of the use of the financial test to demonstrate financial responsibility for ("closure care" "post-closure care" "corrective action costs") arising from operating a solid waste management facility.

The following facilities are assured by this financial test: (List for each facility: the name and address of the facility, the permit number, the closure, post-closure and/or corrective action costs, whichever applicable, for each facility covered by this instrument).

This owner's or operator's financial statements were prepared in conformity with Generally Accepted Accounting Principles for governments and have been audited by ("an independent certified public accountant" "Auditor of Public Accounts"). The owner or operator has not received an adverse opinion or a disclaimer of opinion from ("an independent certified public accountant" "Auditor of Public Accounts") on its financial statements for the latest completed fiscal year.

This owner or operator is not currently in default on any outstanding general obligation bond. Any outstanding issues of general obligation, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

The fiscal year of this owner or operator ends on (month, day). The figures for the following items marked with the asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year ended (date).

(Please complete Alternative I or Alternative II.)

(Fill in Alternative I if the criteria in 9VAC20-70-210 1 a (1) are used. Fill in Alternative II if the criteria of 9VAC20-70-210 1 a (2) are used.)

ALTERNATIVE I—BOND RATING TEST

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding general obligation bond issues that are being used by (name of local government owner or operator, or guarantor) to demonstrate financial responsibility are as follows: (complete table):

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Any outstanding issues of general obligation bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A or Baa and a Standard and Poor's rating of AAA, AA, A or BBB.

1) Sum of current closure, post-closure and corrective action cost estimates (total of all cost estimates listed above) $_____

*2) Operating Deficit

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

*3) Total Revenue

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

4) Other self-insured environmental costs

(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 $_____

(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9VAC25-590 $_____

(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 $_____

(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and 9VAC20-60 $_____

(e) Total of lines 4(a) through 4(d) $_____

	YES	NO
5) Is (line 2a / line 3a) < 0.05?	____	____
6) Is (line 2b / line 3b) < 0.05?	____	____
7) Is (line 1 + line 4e) <= (line 3a x 0.43)?	____	____
8) Is (line 1 + line 4e) <= (line 3a x 0.20)?	____	____

If the answer to line 7 is yes and the answer to line 8 is no, please attach documentation from the agent/trustee /issuing institution stating the current balance of the account/fund /irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9VAC20-70-210.

ALTERNATIVE II—FINANCIAL RATIO TEST

1) Sum of current closure, post-closure and corrective action cost estimates $_____

*2) Operating Deficit

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

*3) Total Revenue

(a) latest completed fiscal year (insert year) $_____

(b) previous fiscal year (insert year) $_____

4) Other self-insured environmental costs

(a) Amount of aggregate underground injection control systems financial assurance insured by a financial test under 40 CFR 144.62 $_____

(b) Amount of annual underground storage tank aggregate coverage insured by a financial test under 40 CFR Part 280 and 9VAC25-590 $_____

(c) Amount of aggregate costs associated with PCB storage facilities insured by a financial test under 40 CFR Part 761 $_____

(d) Amount of annual aggregate hazardous waste financial assurance insured by a financial test under 40 CFR Parts 264 and 265 and 9VAC20-60 $_____

(e) Total of lines 4(a) through 4(d) $_____

*5) Cash plus marketable securities $_____

*6) Total Expenditures $_____

*7) Annual Debt Service $_____

	YES	NO
8) Is (line 2a / line 3a) < 0.05?	____	____
9) Is (line 2b / line 3b) < 0.05?	____	____
10) Is (line 1 + line 4e) <= (line 3a x 0.43)?	____	____
11) Is (line 5 / line 6) >= 0.05?	____	____
12) Is (line 7 / line 6) <= 0.20?	____	____
13) Is (line 1 + line 4e) <= (line 3a x.20)	____	____

If the answer to line 13 is no, please attach documentation from the agent/trustee/issuing institution stating the current balance of the account/fund/irrevocable letter of credit as of the latest fiscal reporting year to this form as required by 9VAC20-70-210.

I hereby certify that the wording of this letter is identical to the wording in 9VAC20-70-290 G of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Signature)

(Name of person signing)

(Title of person signing)

(Date)

H. Certification of funding.

CERTIFICATION OF FUNDING

I certify the following information details the current plan for funding closure and post closure at the solid waste management facilities listed below.

Facility Permit #	Source for funding closure and post closure

Name of Locality or Corporation:

_____

Signature	Printed Name	Date

Title

I. Certification of escrow/sinking fund /irrevocable letter of credit balance.

CERTIFICATION OF ESCROW/SINKING FUND BALANCE OR AMOUNT OF IRREVOCABLE LETTER OF CREDIT

I am the Chief Financial Officer of (name of locality) and hereby certify that as of (date) the current balance in the restricted sinking (type of fund) fund or the escrow account or the amount of the irrevocable letter of credit restricted to landfill closure costs is $_____

The calculation used to determine the amount required to be funded is as follows:

(Show the values that were used in the following formula:

(CE * CD) - E

Where CE is the current closure cost estimate, CD is the percentage of landfill capacity used to date, and E is current year expenses for closure.)

Therefore, this account has been funded or an irrevocable letter of credit has been obtained in accordance with the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9VAC20-70.

(Signature)

(Name of person signing)

(Title of person signing)

(Date)

J. Wording of corporate guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

CORPORATE GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the state of (insert name of state), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation) of which guarantor is a subsidiary"; or "an entity with which the guarantor has a substantial business relationship, as defined in Part I of the Virginia Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70)") to the Virginia Department of Environmental Quality ("Department"), obligee, on behalf of our subsidiary (owner or operator) of (business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9VAC20-70-200 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC20-70-220 of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities ("Regulations").

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans", "post-closure care plans" and "corrective action plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9VAC20-81), or the Regulated Medical Waste Management Regulations (9VAC20-120).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and

other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC20-70-140 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure, post-closure or corrective action plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of closure, post-closure, or corrective action or any other modification or alteration of an obligation of the owner or operator pursuant to the (Solid Waste Management Regulations or Regulated Medical Waste Management Regulations or § 10.1-1454.1 of the Code of Virginia).

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator:) Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action) coverage complying with the requirements of 9VAC20-70. (Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator:) Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording in 9VAC20-70-290 J of the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor)

Effective date: _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

K. Wording of local government guarantee.

(NOTE: Instructions in parentheses are to be replaced with the relevant information and the parentheses removed.)

LOCAL GOVERNMENT GUARANTEE

Guarantee made this (date) by (name of guaranteeing entity), a local government created under the laws of the state of Virginia, herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (address), to the Virginia Department of Environmental Quality ("Department"), obligee.

Recitals

1. Guarantor meets or exceeds the financial test criteria in 9VAC20-70-210 and agrees to comply with the reporting requirements for guarantors as specified in 9VAC20-70-230 of the Financial Assurance Regulations for Solid Waste Disposal, Treatment and Transfer Facilities ("Regulations").

2. (Owner or operator) owns or operates the following (solid, regulated medical, yard) waste management facility(ies) covered by this guarantee: (List for each facility: name, address, and permit number, if any. Indicate

for each whether guarantee is for closure, post-closure care, corrective action or other environmental obligations.)

3. "Closure plans" and "post-closure care plans" as used below refer to the plans maintained as required by the Solid Waste Management Regulations (9VAC20-81).

4. For value received from (owner or operator), guarantor guarantees to the Department that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care," or "corrective action") of the above facility(ies) in accordance with the closure or post-closure care plans and other (requirements of the) permit or (the order) whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 9VAC20-70-150 in the name of (owner or operator) in the amount of the current cost estimates.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the director by certified mail, of a voluntary or involuntary proceeding under Title 11 (bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care, or corrective action, he shall establish alternate financial assurance as specified in Article 4 of Part III of the Regulations in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the closure or post-closure plan, amendment or modification of the permit, amendment or modification of the order, the extension or reduction of the time of performance of the closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to the Virginia (Solid Waste Management or Regulated Medical Waste Management) Regulations.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable financial assurance requirements of Article 4 of Part III of the Regulations for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director of the Department of Environmental Quality and to the (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains and the director approves, alternate (closure, post-closure, corrective action,) coverage complying with the requirements of 9VAC20-70.

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Article 4 of Part III of the Regulations, and obtain written approval of such assurance from the director with 90 days after a notice of cancellation by the guarantor is received by the director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 9VAC20-70-290 K of the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities as such regulations were constituted on the date shown immediately below.

(Name of guarantor) _____

Effective date: _____

(Authorized signature for guarantor) _____

(Name of person signing) _____

(Title of person signing) _____

Signature of witness or notary: _____

9VAC20-160-60. Registration fee.

A. In accordance with § 10.1-1232 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the program.

B. The registration fee shall be at least 1.0% of the estimated cost of the remediation at the site, not to exceed the statutory maximum. Payment shall be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9VAC20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box ~~10150~~ 1104, Richmond, VA ~~23240~~ 23218.

C. To determine the appropriate registration fee, the applicant may provide an estimate of the anticipated total cost of remediation.

Remediation costs shall be based on site investigation activities; report development; remedial system installation, operation and maintenance; and all other costs associated

with participating in the program and addressing the contaminants of concern at the subject site.

Departmental concurrence with an estimate of the cost of remediation does not constitute approval of the remedial approach assumed in the cost estimate.

The participant may elect to remit the statutory maximum registration fee to the department as an alternative to providing an estimate of the total cost of remediation at the time of eligibility verification.

D. If the participant does not elect to submit the statutory maximum registration fee, the participant shall provide the department with the actual total cost of the remediation prior to issuance of a certificate. The department shall calculate any balance adjustments to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certificate. Any costs to be refunded shall be remitted by the department with issuance of the certificate.

E. If the participant elected to remit the statutory maximum registration fee, the department shall refund any balance owed to the participant after receiving the actual total cost of remediation. If no remedial cost summary is provided to the department within 60 days of the participant's receipt of the certificate, the participant will have waived the right to a refund.

9VAC20-170-190. Permit fee requirements.

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any owner or operator of a receiving facility seeking a new permit by rule or seeking a modification to an existing permit by rule. It also establishes schedules and procedures pertaining to the payment and collection of inspection fees from any owner or operator of a receiving facility.

B. Payment, deposit and use of fees.

1. Due date. All permit certification fees are due on the submittal day of the certification package. The inspection fees for the first year or portion of a year are due as part of the permit certification. Thereafter, all inspection fees are due March 1.

2. Method of payment. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia/DEQ", and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box ~~10150~~ 1104, Richmond, VA ~~23240~~ 23218.

3. Incomplete payments. All incomplete payments will be deemed nonpayments.

4. Late payment. No certifications will be deemed complete until the department receives proper payment. In the event that the inspection fee is not received by the department on or prior to March 1, the owner or operator of the facility will be considered to be operating an unpermitted facility.

5. Fee schedules. Each certification for a permit by rule or each certification for a modification to a permit by rule is a separate action and shall be assessed a separate fee. The amount of the permit certification fee is based on the costs associated with the permitting program required by this chapter. An inspection fee will be collected annually and its amount is based on the costs associated with the inspections program conducted by the department on at least a quarterly basis. The fee schedules are shown in the following table.

Type of Action	Fee
Initial certification	$6,200
Modification	
with a closure plan amendment	$2,500
without a closure plan amendment	$1,250
Inspections	$10,000

Part V
Monthly Fees Collected By Receiving Facilities

9VAC20-170-195. Monthly fee requirements.

A. Purpose and application.

1. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of waste monthly fees from any owner or operator of any ship, barge or other vessel by the receiving facility.

2. The fees shall be based on the accurate weight of waste received at the receiving facility. If scales are unavailable, the maximum volumetric capacity of the container multiplied by 0.50 tons per cubic yard may be used as an alternative to accurate weighing of the waste. If the volumetric alternative is used, accurate and complete records of the volume of each container of such waste must be maintained in addition to the calculated weight records describe in this part.

3. If a ship, barge or other vessel that off-loads no more than 50 tons of waste per month in total at all facilities, then the owner or operator of the ship, barge, or other vessel is exempt from the assessment and payment of operating fees and related requirements set out in this section, except for the maintenance of records.

B. Payment, deposit and use of fees.

1. Due date. The owner or operator of the ship, barge, or other vessel shall pay, and the receiving facility shall collect, the correct fees for all waste off-loading at the facility at or before the time it is off-loaded. The owner or operator of the receiving facility shall be the responsible steward for the funds collected and shall forward to the department the total amounts due from all ships, barges or other vessels off-loading at the facility on a monthly basis. All payments for waste received at a facility during the

month shall be received by the department no later than the fifteenth of the succeeding month.

2. Method of payment.

a. The owner or operator of the receiving facility shall send a payment transmittal letter to the Department of Environmental Quality regional office for the area in which the receiving facility is located. The letter shall contain the name of the facility, the period that the payment covers, and a summary of weights of wastes received at the facility for the period, including those calculated in accordance with subdivision A 2 of this section. Attached to the letter shall be a log of the waste received showing the date; time of weighing or measurement; weight or volume and calculated weight of each container received; the name, address, and telephone number of the owner or operator of the ship, barge, or other vessel off-loading the container; the name, address and telephone number of the person actually weighing the waste container or verifying the volume; a certification of the accuracy of the scales based on a calibration, including the name, address and telephone number of the person certifying the accuracy of the scale. A facsimile of the check, draft, or money order submitted under subdivision B 2 b of this section shall also be attached. The owner or operator of the receiving facilities shall keep accurate accounts of all payments of monthly fees by ship, barge or vessel owners and make them available to the department for audit; however, he need not send this information with the aforementioned payment unless requested to do so by the department.

b. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia/DEQ", and shall be sent to the Department of Environmental Quality, Receipts Control, P. O. Box ~~10150~~ 1104, Richmond, VA ~~23240~~ 23218. A copy of the transmittal letter required in subdivision B 2 a of this section, not to include the attachments, shall be included with the check.

c. Scales shall be accurate to measurements of plus or minus 40 pounds and shall be calibrated at least every 180 days. Scales for weighing containers must be located at the receiving facility, unless the monthly fee is determined by the maximum volumetric capacity of the container. Any failure to provide immediate access by Department of Environmental Quality personnel or agents to records or scale equipment during business hours shall be a violation of these regulations.

3. Late payment and incomplete payments. A late fee of 18.0% per annum, compounded daily, shall accrue immediately after a payment is due but not received by VDEQ. A facility shall be in arrears when a payment has not been received by the Department of Environmental Quality by the date it is due. In the event that a facility fails to submit the required monthly fee, the owner or operator of the facility will be considered to be operating an unpermitted facility and shall be required to either obtain a new permit by rule in accordance with 9VAC20-170-180 A or close the facility in accordance with Article 2 (9VAC20-170-120 et seq.) of Part III of this chapter.

4. Fee schedules. The fee for each ton or partial ton of waste (the weight of the waste subject to the fee does not include the weight of the empty container itself) off-loaded at the facility shall be $1.00.

5. The fees collected shall be deposited into a separate account with the Virginia Waste Management Board Permit Program Fund and shall be treated as are other moneys in that fund except that they shall only be used for the purposes of Article 7.1 (§ 10.1-1454.1) of Chapter 14 of Title 10.1 of the Code of Virginia, and for funding purposes authorized by the article. Authorized funding purposes under the article include the administrative and enforcement costs associated with such operations including, but not limited to, the inspection and monitoring of such ships, barges or other vessels to ensure compliance with the article, and activities authorized by § 10.1-1454.1 to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

C. Right of entry, inspection and audit. Upon presentation of appropriate credentials and upon the consent of the owner or custodian, the director of the Department of Environmental Quality or his designee, in addition to the routine inspection of the facility, shall have the right to enter, inspect and audit the records of the receiving facility. The owner or operator of the facility shall provide complete and timely access, during business hours, to all associated equipment, records and facility personnel.

APPENDIX III.

(NOTE: Instructions in brackets are to be replaced with the relevant information and the brackets deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT.

Director

Department of Environmental Quality

P.O. Box ~~10009~~ 1105

Richmond, Virginia ~~23240-0009~~ 23218

Dear [Sir or Madam]:

We hereby establish our Irrevocable Letter of Credit No.[....] in your favor at the request and for the account of [vessel owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars [$....], available upon presentation of

1. Your sight draft, bearing reference to this letter of credit No.[....] together with

2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the

authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following vessels are included in the amount of this letter of credit: (See attached Schedule of Covered Vessels).

This letter of credit is effective as of [date] and will expire on [date at least one year later], but such expiration date will be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and [owner or operator's name] by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt; in addition, the unused portion of the credit will be available for an additional 90 days from the stated expiration date upon presentation of your sight draft and your signed statement declaring that there is a compliance procedure pending.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of [issuing institution] and that the wording of this letter of credit is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

Attest:

[Signature and title of official of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Letter of credit [insert letter of credit number] is applicable to the following vessels:

Vessel Name Gross tons Owner Operator

APPENDIX VIII.

(NOTE: Instructions in brackets are to be replaced with the relevant information and the brackets deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT FOR THIRD PARTY LIABILITY COVERAGE

[Name and Address of Issuing Institution]

Director

Department of Department of Environmental Quality

629 East Main Street

P.O. Box ~~10009~~ 1105

Richmond, Virginia ~~23240-0009~~ 23218

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No._____ in favor of any and all third-party liability claimants, at the request and for the account of [insert owner's or operator's name and address] for third-party liability awards or settlements up to U.S. dollars [$ _____] per occurrence and the annual aggregate amount of U.S. dollars [$ _____], for accidental occurrences available upon presentation of a signed draft, bearing reference to this letter of credit No. _____, and

1. A signed certificate reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal and insert name and address of third-party claimants], hereby certify that the claim of bodily injury and/or property damage arising from a waste deposit into navigable waters by a covered vessel transporting solid and/or regulated medical waste should be paid in the amount of $ _____. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which insert principal is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that insert principal would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of insert principal under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of insert principal arising from, and in the course of, employment by insert principal; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by insert principal. This exclusion applies:

(A) Whether insert principal may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

Signatures

Principal

Signatures

Claimant(s)

or

2. A valid final court order establishing a judgement against the principal for bodily injury or property damage arising from a waste deposit into navigable waters from a covered vessel transporting solid and/or regulated medical waste.

The provisions of this letter of credit are applicable to the vessels indicated on the attached Schedule of Covered Vessels.

This letter of credit is effective as of date and shall expire on date at least one year later, but such expiration date shall be automatically extended for a period of at least one year on date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director and owner's or operator's name by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered insert "primary" or "excess" coverage.

We certify that the wording of this letter of credit is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Letter of credit [insert letter of credit number] is applicable to the following vessels:

Letter of credit [insert letter of credit number] is applicable to the following vessels:

Vessel Name Gross tons Owner Operator

VA.R. Doc. No. R12-3205; Filed June 19, 2012, 9:43 a.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-90, 9VAC25-720-100).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the federal Clean Water Act.

Effective Date: August 15, 2012.

Agency Contact: John Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4312, or email john.kennedy@deq.virginia.gov.

Summary:

The amendments include three total maximum daily load (TMDL) wasteload allocations and one TMDL modification. The amendments are to the Tennessee/Big Sandy River Basin and Chowan River Basin.

9VAC25-720-90. Tennessee-Big Sandy River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Guest River	Guest River Total Maximum Load Report	Wise	P11R	Sediment	317.92	LB/YR
2.	Cedar Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	1,789.93	LB/YR
3.	Hall/Byers Creek	Total Maximum Daily Load (TMDL) Development for	Washington	O05R	Sediment	57,533.49	LB/YR

		Cedar Creek, Hall/Byers Creek and Hutton Creek					
4.	Hutton Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	91.32	LB/YR
5.	Clinch River	Total Maximum Daily Load Development for the Upper Clinch River Watershed	Tazewell	P01R	Sediment	206,636	LB/YR
6.	Lewis Creek	Total Maximum Daily Load Development for the Lewis Creek Watershed	Russell	P04R	Sediment	40,008	LB/YR
7.	Black Creek	General Standard Total Maximum Daily Load Development for Black Creek, Wise County, Virginia	Wise	P17R	Manganese	2,127	KG/YR
8.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Dissolved Solids	1,631,575	KG/YR
9.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Suspended Solids	316,523	KG/YR
10.	Beaver Creek	Total Maximum Daily Load Development for the Beaver Creek Watershed	Washington	O07R	Sediment	784,036	LB/YR
11.	Stock Creek	General Standard (Benthic) Total Maximum Daily Load Development for Stock Creek	Scott	P13R	Sediment	0	T/YR
12.	Lick Creek	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	63	T/YR
13.	Cigarette Hollow	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	0.4	T/YR
14.	Laurel Branch	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	3.9	T/YR
15.	Right Fork	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	1.3	T/YR

16.	Middle Fork Holston River	Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River	Washington, Smyth	O05R	Sediment	100.4	T/YR
17.	Wolf Creek	Bacteria and Benthic Total Maximum Daily Load Development for Wolf Creek	Washington	O06R	Sediment	301.6	T/YR
18.	North Fork Holston River	Mercury Total Maximum Daily Load Development for the North Fork Holston River, Virginia	Scott, Washington, Smyth, Bland, Tazewell, Russell	O10R	Total Mercury	11.9	G/YR

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Receiving Stream	River Mile	Outfall No.	Parameter Description	WLA	Units WLA
VAS-Q13R	VA0061913	Pound WWTP	Pound River	33.26	001	$CBOD_5$, JUN-NOV	28	KG/D
						$CBOD_5$, DEC-MAY	47	KG/D
						TKN, JUN-NOV	28	KG/D
VAS-Q14R	VA0026565	Clintwood WWTP	Cranes Nest River	9.77	001	BOD_5	30	KG/D
VAS-O06R	VA0026531	Wolf Creek Water Reclamation Facility	Wolf Creek	7.26	001	$CBOD_5$	249.8	KG/D
VAS-P01R	VA0026298	Tazewell WWTP	Clinch River	346.26	001	$CBOD_5$, JUN-NOV	76	KG/D
VAS-P03R	VA0021199	Richlands Regional WWTF	Clinch River	317.45	001	BOD_5, JUN-NOV	273	KG/D
VAS-P06R	VA0020745	Lebanon WWTP	Big Cedar Creek	5.22	001	BOD_5	91	KG/D
VAS-P11R	VA0077828	Coeburn Norton Wise Regional WWTP	Guest River	7.56	001	$CBOD_5$, JUN-NOV	303	KG/D
						$CBOD_5$, DEC-MAY	379	KG/D
VAS-P15R	VA0029564	Duffield Industrial Park WWTP	North Fork Clinch River	21.02	001	BOD_5	36	KG/D
VAS-P17R	VA0020940	Big Stone Gap Regional WWTP	Powell River	177.38	001	$CBOD_5$, JUN-NOV	110	KG/D

9VAC25-720-100. Chowan River -- Dismal Swamp River Basin.

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Unnamed Tributary to Hurricane Branch	Benthic TMDL for Hurricane Branch Unnamed Tributary, Virginia	Nottoway	K16R	Sediment	60.9	T/YR
2.	Spring Branch	Total Maximum Daily Load Development for Spring Branch	Sussex	K32R	Phosphorus	145.82	KG/YR
3.	Albemarle Canal/North Landing River	Total Maximum Daily Load Development for Albemarle Canal/North Landing River, A Total Phosphorus TMDL Due to Low Dissolved Oxygen Impairment	Chesapeake, Virginia Beach	K41R	Phosphorus	989.96	KG/YR
4.	Northwest River Watershed	Total Maximum Daily Load Development for the Northwest River Watershed, A Total Phosphorus TMDL Due to Low Dissolved Oxygen Impairment	Chesapeake, Virginia Beach	K40R	Phosphorus	3,262.86	KG/YR

VA.R. Doc. No. R12-3256; Filed June 27, 2012, 10:37 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-50).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200).

Statutory Authority: § 32.1-325 of the Code of Virginia.

Effective Date: August 16, 2012.

Agency Contact: Carla Russell, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (805) 786-1680, or email carla.russell@dmas.virginia.gov.

Summary:

The amendments change the reimbursement for outpatient rehabilitation agencies and comprehensive outpatient rehabilitation facilities (CORFs) from a cost-based methodology to the new fee schedule methodology. CORFs are being removed from the list of providers that are reimbursed on a cost basis in 12VAC30-80-200 and DMAS will implement a statewide fee schedule methodology for outpatient rehabilitation agencies.

The amendments also reduce reimbursement to long-stay hospitals (12VAC30-70-50). Currently, these providers are reimbursed based on the methodology in effect for all hospitals prior to the implementation of the diagnosis related groups prospective reimbursement methodology. The changes to the old methodology include the reduction of the "incentive plan," the elimination of an additional 2.0% annually added to the escalator, and modification of the disproportionate share hospital (DSH) utilization threshold percentage.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12VAC30-70-50. Hospital reimbursement system.

The reimbursement system for hospitals includes the following components:

A. Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural - 0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban - 0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

B. Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

1. The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

2. Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

3. The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

4. The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

5. Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

6. Effective on or after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

7. Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points, (200 basis points) to the then current allowance for inflation. [~~Effective July 1, 2009, the additional two percentage points shall no longer be included in the escalation factor.~~] The escalation factor shall be applied in accordance with the inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

Effective July 1, 2010, through June 30, 2012, the escalation factor shall be zero. In addition, ceilings shall remain at the same level as the ceilings for long stay hospitals with fiscal year's end of June 30, 2010.

Effective July 1, 2009, the escalation factor shall be equal to the allowance for inflation.

8. The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

C. Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator factor.

D. Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator factor, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Capital and education costs approved pursuant to PRM-15 (§ 400) shall be considered as pass throughs and not part of the calculation. Capital cost is reimbursed the percentage of allowable cost specified in 12VAC30-70-271.

E. An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to ~~25%~~ 10.5% of the difference between

allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report. Effective for dates of service July 1, 2010, through September 30, 2010, the incentive plan shall be eliminated.

F. Disproportionate share hospitals defined.

The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

1. Criteria.

a. A Medicaid inpatient utilization rate in excess of ~~8%~~ 10.5% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

c. Subdivision 1 b of this subsection does not apply to a hospital:

(1) At which the inpatients are predominantly individuals under 18 years of age; or

(2) Which does not offer nonemergency obstetric services as of December 21, 1987.

2. Payment adjustment.

a. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the number of utilization Medicaid inpatient days by the total number of inpatient days. Each hospital with a Medicaid utilization of over ~~8.0%~~ 10.5% shall receive a disproportionate share payment adjustment.

b. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of ~~8.0%~~ 10.5%, times 11, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of ~~8.0%~~ 10.5% times (ii) the lower of the prospective operating cost rate or ceiling.

c. No payments made under subdivision 1 or 2 of this subsection shall exceed any applicable limitations upon such payments established by federal law or regulations.

G. Outlier adjustments.

1. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

2. DMAS shall pay to disproportionate share hospitals (as defined in subsection F of this section) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

3. The outlier adjustment calculation.

a. Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision 1 or 2 of this subsection. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

b. Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision 1 or 2 of this subsection.

c. Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in subdivision 3 a (ii) of this subsection.

d. DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

4. Pursuant to 12VAC30-50-100, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued

length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 1 d. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 150 days after the provider's fiscal year end. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Outpatient hospital services including rehabilitation hospital outpatient services and excluding laboratory.

a. Definitions. The following words and terms when used in this regulation shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Limitation of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at various percentages as noted in subdivisions 1 c (1) and (2) of this subsection of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date.

(1) Type One hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating reimbursement shall be at 91.2% of allowable cost and capital reimbursement shall be at 87% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating reimbursement shall be at 90.2% of allowable cost and capital reimbursement shall be at 86% of allowable cost.

(2) Type Two hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating and capital reimbursement shall be 77% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating and capital reimbursement shall be 76% of allowable cost.

d. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12VAC30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

2. Rehabilitation agencies ~~operated by community services boards~~ or comprehensive outpatient rehabilitation [.] ~~For reimbursement methodology applicable to other rehabilitation agencies, see 12VAC30-80-200. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement~~

a. Effective July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities that are operated by community services boards or state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

b. [~~RESERVED.~~ (Reserved.)]

12VAC30-80-200. Prospective reimbursement for rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

A. ~~Effective for dates of service on and after July 1, 2009, rehabilitation agencies, excluding those operated by community services boards and state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus $371,800.~~ Rehabilitation agencies or comprehensive outpatient rehabilitation facilities.

1. Effective for dates of service on and after July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities, excluding those operated by community services boards or state agencies, shall be reimbursed a prospective rate equal to the lesser of the agency's fee schedule amount or billed charges per

procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus $371,800.

2. (Reserved.)

B. Reimbursement for rehabilitation agencies subject to the new fee schedule methodology.

~~For providers with~~ 1. Payments for the fiscal ~~years that do not begin on July 1, 2009, services on or before~~ year ending or in progress on June 30, 2009, ~~for the fiscal year in progress on that date~~ shall be settled for private rehabilitation agencies based on the previous prospective rate methodology and the ceilings in effect for that fiscal year as of June 30, 2009.

2. (Reserved.)

~~C. Rehabilitation services furnished by community service boards or state agencies shall be reimbursed costs based on annual cost reporting methodology and procedures.~~

~~D.~~ C. Beginning with state fiscal years beginning on or after July 1, 2010, rates shall be adjusted annually for inflation using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

D. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the nursing facility or any other available source, and provided further, that this subsection shall in no way diminish any obligation of the nursing facility to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

E. Effective July 1, 2010, there will be no inflation adjustment for outpatient rehabilitation facilities through June 30, 2012.

VA.R. Doc. No. R09-1968; Filed June 19, 2012, 3:43 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: The Safety and Health Codes Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-35. Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees (amending 16VAC25-35-10 through 16VAC25-35-40).**

Statutory Authority: §§ 40.1-22 (5) and 40.1-51.20 of the Code of Virginia.

Effective Date: September 15, 2012.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

The amendments (i) replace the term "certified" with "licensed," (ii) replace "residential building" with "residential dwelling," (iii) update references to 18VAC15-30, and (iv) change "Department of Professional and Occupational Regulation" to "Virginia Board for Asbestos, Lead, and Home Inspectors."

16VAC25-35-10. Definitions.

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

~~"Certified contractor" is defined in the Virginia Board for Asbestos and Lead's Virginia Lead-Based Paint Activities Regulation, 18VAC15-30-10.~~

"Department" means the Department of Labor and Industry.

"Lead project" means any lead-related activity which requires the contractor performing such activity to be licensed ~~or certified~~ by the ~~Department of Professional and Occupational Regulation~~ Virginia Board for Asbestos, Lead, and Home Inspectors.

"Licensed lead abatement contractor" or "lead contractor" is defined in the Virginia Board for Asbestos, Lead, and Home Inspectors' Lead-Based Paint Activities Regulation, 18VAC15-30-20.

"Residential ~~building~~ dwelling" is defined in the Virginia Board for Asbestos ~~and Lead's~~, Lead, and Home Inspectors' Lead-Based Paint Activities Regulation, ~~18VAC15-30-10~~ 18VAC15-30-20.

16VAC25-35-20. Authority and application.

A. This regulation is established in accordance with § 40.1-51.20 of the Code of Virginia.

B. This regulation shall apply to all contractors in the performance of lead-related activities which require such contractors to be licensed ~~or certified~~ by the ~~Department of Professional and Occupational Regulation~~ Virginia Board for Asbestos, Lead, and Home Inspectors.

C. This regulation shall not affect the reporting requirements under § 40.1-51.20 C of the Code of Virginia or any other

notices or inspection requirements under any other provision of the Code of Virginia.

16VAC25-35-30. Notification and permit fee.

A. Written notification of any lead project, the contract price of which is $2,000 or more, shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.

B. The department form shall include the following information:

1. Name, address, telephone number, and the certification number of each person intending to engage in a lead project.

2. Name, address, and telephone number of the owner or operator of the facility in which the lead project is to take place.

3. Type of notification: amended, emergency, renovation or demolition.

4. Description of facility in which the lead project is to take place, including address, size, and number of floors.

5. Estimate of amount of lead and method of estimation.

6. Amount of the lead project fee submitted.

7. Scheduled setup date, removal date or dates, and completion date and times during which lead-related activity will take place.

8. Name and ~~certificate~~ license number of the supervisor on site.

9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site or sites where the lead-containing material will be disposed.

10. Detailed description of the methods to be used in performing the lead project.

11. Procedures and equipment used to control the emission of lead-contaminated dust, to contain or encapsulate lead-based paint, and to replace lead-painted surfaces or fixtures in order to protect public health during performance of the lead project.

12. If a facsimile transmission is to be made pursuant to subsection J of this section, the credit card number, expiration date, and signature of cardholder.

13. Any other information requested on the department form.

C. A lead project permit fee shall be submitted with the completed project notification form. The fee shall be in accordance with the following schedule:

1. The greater of $100 or 1.0% of the contract price, with a maximum of $500.

2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program by at least 10%, the commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for a lead project on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in subsection A of this section to the department at least 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:

a. The dates of work required by subdivision B 7 of this section shall be every work day during the blanket notification period, excluding weekends and state holidays.

b. The estimate of lead to be removed required under subdivision B 5 of this section shall be signed by the owner and the owner's signature authenticated by a notary.

c. A copy of the contract shall be submitted with the notification.

2. The lead project permit fee for blanket notifications shall be as set forth in subsection C of this section.

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be present at the site. The fee for each amended notification will be $15.

4. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must include the actual amount of lead removed and the actual amount of payments made under the contract. The refund shall be the difference between the original lead permit fee paid and 1.0% of the actual amount of payments made under the contract.

E. Notification of fewer than 20 days may be allowed in case of an emergency involving protection of life, health or property. In such cases, notification and the lead permit fee shall be submitted within five working days after the start of the emergency lead project. A description of the emergency situation shall be included when filing an emergency notification.

F. A notification shall not be effective unless a complete form is submitted and the proper permit fee is enclosed with the completed form. A notification made by facsimile transmission pursuant to subsection J of this section shall not be effective if the accompanying credit card payment is not approved.

G. On the basis of the information submitted in the lead notification, the department shall issue a permit to the

contractor within seven working days of the receipt of a completed notification form and permit fee.

1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.

H. Amended notifications may be submitted for modifications of subdivisions B 3 through B 11 of this section. No amendments to subdivision B 1 or B 2 of this section shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.

1. No amended notification shall be effective if an incomplete form is submitted or if the proper permit amendment fee is not enclosed with the completed notification.

2. A permit amendment fee shall be submitted with the amended notification form. The fee shall be in accordance with the following schedule:

a. For modifications to subdivisions B 3, B 4, and B 6 through B 10 of this section, $15.

b. For modifications to subdivision B 5 of this section, the difference between the permit fee in subsection C of this section for the amended amount of lead and the original permit fee submitted, plus $15.

3. Modifications to the completion date may be made at any time up to the completion date on the original notification.

4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.

I. The department must be notified prior to any cancellation. A copy of the original notification form marked "canceled" must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the lead project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted.

The following amounts will be deducted from the refund payment: $15 for processing of the original notification, $15 for each amendment filed, and $15 for processing the refund payment.

J. Notification for any lead project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.

16VAC25-35-40. Exemption.

No lead project fees will be required for residential ~~buildings~~ dwellings. Notification for lead projects shall otherwise be in accordance with applicable portions of this chapter.

VA.R. Doc. No. R12-3255; Filed June 15, 2012, 1:10 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Safety and Health Codes Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-190).**

Statutory Authority: § 40.1-22 (5) of the Code of Virginia.

Effective Date: September 15, 2012.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

The regulatory action updates the mailing address for the Commissioner of Labor and Industry.

Part IV
Variances

16VAC25-60-190. General provisions.

A. Any employer or group of employers desiring a permanent or temporary variance from a standard or regulation pertaining to occupational safety and health may file with the commissioner a written application which shall be subject to the following policies:

1. A request for a variance shall not preclude or stay a citation or bill of complaint for violation of a safety or health standard;

2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner;

3. An employer, or group of employers, who has applied for a variance from the U.S. Department of Labor, and whose application has been denied on its merits, shall not be granted a variance by the commissioner unless there is a showing of changed circumstances significantly affecting the basis upon which the variance was originally denied;

4. An employer to whom the U.S. Secretary of Labor has granted a variance under OSHA provisions shall document this variance to the commissioner. In such cases, unless compelling local circumstances dictate otherwise, the variance shall be honored by the commissioner without the necessity of following the formal requirements which would otherwise be applicable. In addition, the commissioner will not withdraw a citation for violation of a standard for which the Secretary of Labor has granted a

variance unless the commissioner previously received notice of and decided to honor the variance; and

5. Incomplete applications will be returned within 30 days to the applicant with a statement indicating the reason or reasons that the application was found to be incomplete.

B. In addition to the information specified in 16VAC25-60-200 A and 16VAC25-60-210 A, every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with 16VAC25-60-40, a summary of the application which indicates where a full copy of the application may be examined;

2. A statement indicating that the applicant has posted, with the summary of the application described above, the following notice: "Affected employees or their representatives have the right to petition the Commissioner of Labor and Industry for an opportunity to present their views, data, or arguments on the requested variance, or they may submit their comments to the commissioner in writing. Petitions for a hearing or written comments should be addressed to the Commissioner of Labor and Industry, ~~Powers-Taylor Building, 13 South Thirteenth Street~~ Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA ~~23219-4101~~ 23219. Such petitions will be accepted if they are received within 30 days from the posting of this notice or within 30 days from the date of publication of the commissioner's notice that public comments concerning this matter will be accepted, whichever is later."

3. A statement indicating whether an application for a variance from the same standard or rule has been made to any federal agency or to an agency of another state. If such an application has been made, the name and address of each agency contacted shall be included.

C. Upon receipt of a complete application for a variance, the commissioner shall publish a notice of the request in a newspaper of statewide circulation within 30 days after receipt, advising that public comments will be accepted for 30 days and that an informal hearing may be requested in conformance with subsection D of this section. Further, the commissioner may initiate an inspection of the establishment in regard to the variance request.

D. If within 30 days of the publication of notice the commissioner receives a request to be heard on the variance from the employer, affected employees, the employee representative, or other employers affected by the same standard or regulation, the commissioner will schedule a hearing with the party or parties wishing to be heard and the employer requesting the variance. The commissioner may also schedule a hearing upon his own motion. The hearing will be held within a reasonable time and will be conducted informally in accordance with §§ 2.2-4019 and 2.2-4021 of the Code of Virginia unless the commissioner finds that there is a substantial reason to proceed under the formal provisions of § 2.2-4020 of the Code of Virginia.

E. If the commissioner has not been petitioned for a hearing on the variance application, a decision on the application may be made promptly after the close of the period for public comments. This decision will be based upon the information contained in the application, the report of any variance inspection made concerning the application, any other pertinent staff reports, federal OSHA comments or public records, and any written data and views submitted by employees, employee representatives, other employers, or the public.

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either 16VAC25-60-200 B 4 or 16VAC25-60-210 B 4.

1. The commissioner shall advise the employer in writing of the decision and shall send a copy to the employee representative if applicable. If the variance is granted, a notice of the decision will be published in a newspaper of statewide circulation.

2. The employer shall post a copy of the commissioner's decision in accordance with 16VAC25-60-40.

G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of 16VAC25-60-40.

H. The board shall sustain, reverse, or modify the commissioner's decision based upon consideration of the evidence in the record upon which the commissioner's decision was made and the views and arguments presented as provided above. The burden shall be on the party filing the appeal to designate and demonstrate any error by the commissioner which would justify reversal or modification of the decision. The issues to be considered by the board shall be those issues that could be considered by a court reviewing agency action in accordance with § 2.2-4027 of the Code of Virginia. All parties involved shall be advised of the board's decision within 10 working days after the hearing of the appeal.

VA.R. Doc. No. R12-3228; Filed June 15, 2012, 1:12 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. In addition, the Safety and Health Codes Board is claiming an exemption pursuant to § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending Appendix A to 16VAC25-90-1910.119, 16VAC25-90-1910.120, 16VAC25-90-1910.146, Appendix A to 16VAC25-90-1910.151, 16VAC25-90-1910.177, Appendix B to 16VAC25-90-1910.177, 16VAC25-90-1910.217, 16VAC25-90-1910.261, 16VAC25-90-1910.265, 16VAC25-90-1910.272, 16VAC25-90-1910.440, 16VAC25-90-1910.1003, 16VAC25-90-1910.1025, 16VAC25-90-1910.1030).**

16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.1000).

16VAC25-175. Federal Identical Construction Industry Standards (amending Appendix A to 16VAC25-175-1926.50, 16VAC25-175-1926.62).

Statutory Authority: § 40.1-22 (5) of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: September 15, 2012.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

Federal OSHA has made nonsubstantive technical amendments to and has corrected typographical errors in 16 different General Industry, Construction, and Shipyard Employment standards. The technical amendments include updating or revising cross-references and updating OSHA recordkeeping log numbers.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910, Occupational Safety and Health Standards, 29 CFR Part 1915, Occupational Safety and Health Standards for Shipyard Employment, and 29 CFR Part 1926, Safety and Health Regulations for Construction, are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each of these documents is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On May 24, 2012, the Safety and Health Codes Board adopted federal OSHA's revised final rule for Corrections and Technical Amendments to 16 OSHA Standards as published in 76 FR 80735 through 80741 on December 27, 2011, with an effective date of September 15, 2012.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards, Occupational Safety and Health Standards for Shipyard Employment, and Safety and Health Regulations for Construction are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
December 27, 2011	September 15, 2012

VA.R. Doc. No. R12-3252; Filed June 15, 2012, 1:14 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. In addition, the Safety and Health Codes Board is claiming an exemption pursuant to § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.102).**

Statutory Authority: § 40.1-22 (5) of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: September 15, 2012.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

Federal OSHA has revised its Acetylene Standard for general industry by updating a reference to a standard published by a standards-developing organization and the Virginia regulation is amended accordingly.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910, Occupational Safety and Health Standards, is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the document will not be printed in the Virginia Register of Regulations. A copy this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the Office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On May 24, 2012, the Safety and Health Codes Board adopted federal OSHA's Direct Final Rule for Revising Standards Referenced in the Acetylene Standard, § 1910.102, as published in 76 FR 75782 through 75786 on December 5, 2011, with an effective date of September 15, 2012.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
December 5, 2011	September 15, 2012

VA.R. Doc. No. R12-3253; Filed June 15, 2012, 1:15 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Safety and Health Codes Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **16VAC25-160. Construction Industry Standard for Sanitation (amending 16VAC25-160-10).**

16VAC25-180. Virginia Field Sanitation Standard, Agriculture (amending 16VAC25-180-10).

Statutory Authority: § 40.1-22 (5) of the Code of Virginia.

Effective Date: September 15, 2012.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Summary:

The regulatory action corrects references to the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations.

16VAC25-160-10. Construction industry sanitation standard; in general (29 CFR 1926.51).

Note: The following standard is unique for the enforcement of occupational safety and health within the Commonwealth of Virginia under the jurisdiction of the VOSH Program. The existing federal OSHA standard does not apply; it does not carry the force of law and is not printed in this volume.

(a) Water supply.

(1) Potable drinking water.

(i) Potable water shall be provided and placed in locations readily accessible to all employees.

(ii) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed to meet the needs of all employees.

(iii) The water shall be dispensed in single-use drinking cups or by fountains. The use of the common drinking cup is prohibited.

(2) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(3) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose. Water shall not be dipped from containers.

(4) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the cups shall be provided.

(5) Maintenance. Potable drinking water, toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, and shall include the following:

(i) Drinking water containers shall be constructed of materials that maintain water quality;

(ii) Drinking water containers shall be refilled daily and shall be covered; and

(iii) Drinking water containers shall be regularly cleaned.

(b) Nonpotable water.

(1) Outlets for nonpotable water, such as water for industrial or firefighting purposes only, shall be identified by signs meeting the requirements of Subpart G of this part

(16VAC25-175-1926.200 et seq.), to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(2) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(c) Toilet and handwashing facilities.

(1) One toilet and one handwashing facility shall be provided for each 20 employees or fraction thereof.

(2) Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from inside and shall be constructed to insure privacy.

(3) Toilet and handwashing facilities shall be readily accessible to all employees, accessibly located and in close proximity to each other.

(4) Toilet facilities shall be operational and maintained in a clean and sanitary condition.

(5) The requirements of this paragraph for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(d) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard.

(e) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard.

(f) Washing facilities. Hand washing facilities shall be refilled with potable water as necessary to ensure an adequate supply of potable water, soap and single use towels.

(g) Revoked

(h) Waste disposal. (1) Disposal of wastes from facilities shall not cause unsanitary conditions.

(i) Definitions.

(1) "Handwashing" facility means a facility providing either a basin, container or outlet with an adequate supply of potable water, soap and single use towels.

(2) "Potable water" means water that meets the standards for drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U. S. Environmental Protection Agency's ~~Interim~~ National Primary Drinking Water Regulations, published in 40 CFR Part 141.

(3) "Toilet facility" means a fixed or portable facility designed for the containment of the products of both defecation and urination which is supplied with toilet paper adequate to meet employee needs. Toilet facilities include biological, chemical, flush and combustion toilets and sanitary privies.

16VAC25-180-10. Field sanitation (29 CFR 1928.110).

Note: The following standard is unique for the enforcement of occupational safety and health within the Commonwealth of Virginia under the jurisdiction of the VOSH Program. The existing federal OSHA standard does not apply; it does not carry the force of law and is not printed in this volume.

(a) Scope. This section shall apply to any agricultural establishment where 11 or more employees are engaged on any given day in hand-labor operations in the field. 16VAC25-180-10 (c)(1) shall apply to all agricultural establishments regardless of the number of employees.

(b) Definitions.

"Agricultural employer" means any person, corporation, association, or other legal entity that:

(i) Owns or operates an agricultural establishment;

(ii) Contracts with the owner or operator of an agricultural establishment in advance of production of the purchase of a crop and exercises substantial control over production; or

(iii) Recruits and supervises employees or is responsible for the management and condition of an agricultural establishment.

"Agricultural establishment" is a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants, or parts of plants.

"Hand-labor operations" means agricultural activities or agricultural operations performed by hand or with hand tools. Except for purposes of paragraph (c)(2)(iii) of this chapter, "hand-labor operations" also include other activities or operations performed in conjunction with hand labor in the field. Some examples of "hand-labor operations" are the hand-cultivation, hand-weeding, hand-planting and hand-harvesting of vegetables, nuts, fruits, seedlings or other crops, including mushrooms, and the hand packing of produce into containers, whether done on the ground, on a moving machine or in a temporary packing shed located in the field. "Hand-labor" does not include such activities as logging operations, the care or feeding of livestock, or hand-labor operations in permanent structures (e.g., canning facilities or packing houses).

"Handwashing facility" means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels.

"Potable water" means water that meets the standards of drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National ~~Interim~~ Primary Drinking Water Regulations, published in 40 CFR Part 141.

"Toilet facility" means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination which is supplied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets and sanitary privies.

(c) Requirements. Agricultural employers shall provide the following for employees engaged in hand-labor operations in the field, without cost to the employee:

(1) Potable drinking water.

(i) Potable water shall be provided and placed in locations readily accessible to all employees.

(ii) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet the needs of all employees.

(iii) The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

(2) Toilet and handwashing facilities.

(i) One toilet facility and one handwashing facility shall be provided for each twenty (20) employees or fraction thereof, except as stated in paragraph (c)(2)(v) of this chapter.

(ii) Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from the inside and shall be constructed to insure privacy.

(iii) Toilet and handwashing facilities shall be accessibly located and in close proximity to each other. The facilities shall be located within a one-quarter-mile walk of each hand laborer's place of work in the field.

(iv) Where due to terrain it is not feasible to locate facilities as required above, the facilities shall be located at the point of closest vehicular access.

(v) Toilet and handwashing facilities are not required for employees who perform field work for a period of three hours or less (including transportation time to and from the field) during the day.

(3) Maintenance. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

(i) Drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered and shall be regularly cleaned.

(ii) Toilet facilities shall be operational and maintained in clean and sanitary condition.

(iii) Handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition; and

(iv) Disposal of wastes from facilities shall not cause unsanitary conditions.

(4) Reasonable Use. The employer shall notify each employee of the location of the sanitation facilities and water and shall allow each employee reasonable opportunities during the workday to use them. The employer also shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine and agrichemical residues:

(i) Use the water and facilities provided for drinking, handwashing and elimination;

(ii) Drink water frequently and especially on hot days;

(iii) Urinate as frequently as necessary;

(iv) Wash hands both before and after using the toilet; and

(v) Wash hands before eating and smoking.

(d) Dates

(1) Effective Date. This chapter shall take effect on May 30, 1987.

(2) Startup Dates. Employers must comply with the requirements of paragraphs:

(i) Paragraph (c)(1), to provide potable drinking water, by May 30, 1987;

(ii) Paragraph (c)(2), to provide handwashing and toilet facilities, by July 30, 1987;

(iii) Paragraph (c)(3), to provide maintenance for toilet and handwashing facilities, by July 30, 1987; and

(iv) Paragraph (c)(4), to assure reasonable use, by July 30, 1987.

[52 F.R. 16095, May 1, 1987]

VA.R. Doc. No. R12-3254; Filed June 15, 2012, 1:16 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Final Regulation

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

Title of Regulation: **18VAC15-60. Mold Inspector and Remediator Regulations (repealing 18VAC15-60-10 through 18VAC15-60-390).**

Statutory Authority: § 54.1-501 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly deregulate mold remediation and mold inspection activities based on a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. Therefore, the Mold Inspector and Remediator Regulations are repealed.

VA.R. Doc. No. R12-3259; Filed June 19, 2012, 1:09 p.m.

BOARD FOR BARBERS AND COSMETOLOGY

Final Regulation

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

Title of Regulation: **18VAC41-30. Hair Braiding Regulations (repealing 18VAC41-30-10 through 18VAC41-30-250).**

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

Effective Date: August 15, 2012.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly deregulate hair braiding based on a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. Therefore, the Hair Braiding Regulations are repealed.

VA.R. Doc. No. R12-3260; Filed June 19, 2012, 1:09 p.m.

BOARD FOR GEOLOGY

Final Regulation

REGISTRAR'S NOTICE: Enactments 38 through 43 of Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Professional Soil Scientists and Wetland Professionals with the Board for Geology to create the Board for Professional Soil Scientists, Wetland Professionals, and Geologists. This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Professional Soil Scientists, Wetland Professionals, and Geologists will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC70-11. Public Participation Guidelines (repealing 18VAC70-11-10 through 18VAC70-11-110).**

Statutory Authority: §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: David Dick, Executive Director, Board for Geology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email geology@dpor.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Geology with the Board for Professional Soil Scientists and Wetland Professionals effective July 1, 2012. The Public Participation Guidelines (PPGs) for the Board for Geology are repealed and the PPGs for the Board for Professional Soil Scientists and Wetland Professionals will be amended to reflect the new board name and will be in effect for the newly merged board.

VA.R. Doc. No. R12-3264; Filed June 19, 2012, 1:10 p.m.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Final Regulation

REGISTRAR'S NOTICE: Enactments 34 through 37 of Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Hearing Aid Specialists with the Board for Opticians to create the Board for Hearing Aid Specialists and Opticians. This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2- 4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Hearing Aid Specialists and Opticians will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC80-11. Public Participation Guidelines (amending 18VAC80-11-10, 18VAC80-11-20).**

Statutory Authority: §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email hearingaidspec@dpor.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Opticians with the Board for Hearing Aid Specialists effective July 1, 2012. The Public Participation Guidelines (PPGs) for the Board for Opticians are repealed and the PPGs for the Board for Hearing Aid Specialists are amended to reflect the new board name, Board for Hearing Aid Specialists and Opticians.

Part I
Purpose and Definitions

18VAC80-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board for Hearing Aid Specialists and Opticians. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC80-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board for Hearing Aid Specialists and Opticians, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

VA.R. Doc. No. R12-3266; Filed June 19, 2012, 1:12 p.m.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Final Regulation

REGISTRAR'S NOTICE: Enactments 34 through 37 of Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Hearing Aid Specialists with the Board for Opticians to create the Board for Hearing Aid Specialists and Opticians. The following action transfers the Board for Opticians regulations numbered 18VAC100-20 to the Board for Hearing Aid Specialists and Opticians and renumbers the regulations as 18VAC80-30.

This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2- 4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Hearing Aid Specialists and Opticians will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC80-30. Opticians Regulations formerly 18VAC100-20-5 through 18VAC100-20-130; (adding 18VAC80-30-10 through 18VAC80-30-180).**

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

Effective Date: August 15, 2012.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email opticians@dpor.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Opticians with the Board for Hearing Aid Specialists based on a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. This regulatory action amends the Board for Opticians regulations to reflect the new board name and renumbers the regulations so that they are placed under the Board for Hearing Aid Specialists and Opticians in the Virginia Administrative Code.

CHAPTER ~~20~~ 30
~~BOARD FOR~~ OPTICIANS REGULATIONS

Part I
General Definitions

~~18VAC100-20-5.~~ 18VAC80-30-10. Definitions.

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

"Apprentice" means a person at least 16 years of age who is covered by a written agreement with an employer and approved by the Virginia Apprenticeship Council.

"Board" means the Board for Hearing Aid Specialists and Opticians.

"Contact lens endorsed optician" means any person not exempted by § ~~54.1-1701~~ 54.1-1506 of the Code of Virginia who is a Virginia licensed optician and who has received a contact lens endorsement from the board, who fits contact lenses on prescription from licensed physicians or licensed optometrists for the intended wearers.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fit ~~and~~ or dispense" means to measure, adapt, fit or adjust eyeglasses, spectacles, lenses, or appurtenances to the human face, or to verify the prescription to be correct in the prescription eyeglasses or prescription optical devices.

"Licensed optician" means any person who is the holder of a license issued by the Board for Opticians.

"Optician" means any person not exempted by § ~~54.1-1701~~ 54.1-1506 of the Code of Virginia who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances for the intended wearers or users on prescriptions from licensed physicians or licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances; or who, in accordance with such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses, spectacles, lenses, or appurtenances to the human face.

"Opticianry" means the personal health service that is concerned with the art and science of ophthalmic optics as applied to the compounding, filling and adaptations of ophthalmic prescriptions, products, and accessories.

Part II
Entry Requirements

~~18VAC100-20-10.~~ 18VAC80-30-20. Qualifications of applicant.

An applicant for a license shall furnish satisfactory evidence on an application provided by the board establishing that:

1. The applicant is at least 18 years of age unless emancipated under the provisions of § 16.1-333 of the Code of Virginia;

2. The applicant is a graduate of an accredited high school, or has completed the equivalent of grammar school and a four-year high school course, or is a holder of a certificate of general educational development;

3. The applicant is in good standing as a licensed optician in every jurisdiction where licensed;

4. The applicant has not been convicted in any jurisdiction of a misdemeanor or felony involving sexual offense, drug distribution or physical injury, or any felony that directly relates to the profession of opticianry. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The licensee shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;

5. The applicant has successfully completed one of the following education requirements:

a. A board-approved two-year course in a school of opticianry, including the study of topics essential to qualify for practicing as an optician; or

b. A three-year apprenticeship with a minimum of one school year of related instruction or home study while registered in the apprenticeship program in accordance with the standards established by the state Department of Labor and Industry, Division of Apprenticeship Training and approved by the Board for Opticians;

6. The applicant has disclosed his current mailing address;

7. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the director of the department to serve as service agent for all actions filed in any court in the Commonwealth; and

8. The applicant shall certify, as part of the application, that the applicant has read and understands Chapter ~~17~~ 15 (§ ~~54.1-1700~~ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

~~18VAC100-20-50.~~ 18VAC80-30-30. Opticians licensed in another state.

A. An optician licensed in another state seeking to be licensed as an optician in Virginia shall submit an application on a form provided by the board with the required fee. All fees are nonrefundable and shall not be prorated.

B. The board, using the following standards, shall issue a license to any person licensed in another state who:

1. Has met requirements equivalent to those listed in ~~18VAC100-20-10~~ 18VAC80-30-20; and

2. Has passed a substantially equivalent examination.

~~18VAC100-20-53.~~ 18VAC80-30-40. Registration for voluntary practice by out-of-state licensees.

Any optician who does not hold a license to practice in Virginia and who seeks registration in accordance with subdivision 5 of § ~~54.1-1701~~ 54.1-1506 of the Code of Virginia shall:

1. File a complete application for registration on a form provided by the board within 15 days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide a name of the nonprofit organization, the dates and location of the voluntary provision of services; and

4. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of subdivision 5 of § ~~54.1-1701~~ 54.1-1506 of the Code of Virginia.

~~18VAC100-20-54.~~ 18VAC80-30-50. Fees.

A. The fee for examination or examinations shall consist of the combination of an administrative charge of $25 (spectacle), $25 (contact lens), and the appropriate contract charges. Examination service contracts shall be established in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The total examination fee shall not exceed a cost of $1,000 to the applicant.

B. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date which will be used to determine whether it is on time.

C. Application and examination fees must be submitted with the application for licensure.

The following fees shall apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for licensure	$100	With application
Application for contact lens certification	$100	With application
Renewal	$100	Up to the expiration date on the license with a 30-day grace period
Late renewal (includes renewal fee)	$125	Between 30 and 60 days after the expiration date on the license
Reinstatement (includes renewal and late renewal fees)	$225	After 60 days following the expiration date on the license

~~18VAC100-20-55.~~ 18VAC80-30-60. Examinations.

A. All examinations required for licensure shall be approved by the board and administered by the board, or its agents or employees acting on behalf of the board.

B. The board shall schedule an examination to be held at least twice each calendar year at a time and place to be designated by the board.

C. The applicant shall follow all rules established by the board with regard to conduct at an examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board with regard to conduct at an examination shall be grounds for denial of application.

~~18VAC100-20-56.~~ 18VAC80-30-70. Content of optician examination and reexamination.

A. Applicants for licensure shall pass a written examination and a practical examination approved by the board.

B. The optician examination given by the board may include, but is not limited to, the following topics:

1. Ophthalmic materials;

2. Ophthalmic optics and equipment;

3. Ophthalmic spectacle lens grinding;

4. Prescription interpretation;

5. Theory of light;

6. Finishing, fitting and adjusting of eyeglasses and frames;

7. Ethics of relationship in respect to patient and physician or optometrist;

8. Anatomy and physiology; and

9. Applicable laws and regulations.

C. Any applicant who fails the written or practical examination, or both examinations, shall be required to be reexamined on the failed examination(s) and shall pay the reexamination fee(s).

D. An applicant shall pass the written and practical examination within two years of the initial test date. After two years, the applicant shall file a new application and pay the required fee.

~~18VAC100-20-60.~~ 18VAC80-30-80. Endorsement to fit contact lenses.

The board shall administer a contact lens examination to fit contact lenses. The "Contact Lens" endorsement shall be mandatory for licensed opticians to fit contact lenses as set out in §§ ~~54.1-1705~~ 54.1-1508 and ~~54.1-1706~~ 54.1-1509 of the Code of Virginia, and the contact lens endorsement shall not be issued unless the individual's license is in good standing. A contact lens endorsed optician is any Virginia licensed optician who has been endorsed by the board to fit contact lens.

~~18VAC100-20-65.~~ 18VAC80-30-90. Content of contact lens endorsement examination and reexamination.

A. The contact lens endorsement examination administered by the board may include, but is not limited to, the following topics:

1. Rigid lens verification;

2. Lens identification;

3. Keratomy;

4. Slit lamp;

5. Slides (fitting patterns, edge patterns, quality stains); and

6. Insertion/removal.

B. Any applicant who fails the written or practical contact lens examination, or both examinations, who desires to retake the examination(s), shall be required to be reexamined on the failed examination(s) and shall pay the reexamination fee(s).

C. An applicant shall pass the written and practical examination within two years of the initial test date. After two years, the applicant shall file a new application and pay the required fee.

Part III
Renewal

~~18VAC100-20-70.~~ 18VAC80-30-100. License renewal required.

A. Licenses issued under this chapter shall expire 24 months from the last day of the month in which the license was issued.

B. The board shall mail a renewal application form to the licensee at the last known mailing address. Failure to receive this notice does not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return all of the required forms and the appropriate fee to the board as outlined in ~~18VAC100-20-54~~ 18VAC80-30-50. If the licensee fails to receive the renewal notice, a copy of the existing license shall be submitted to the board with the required fee.

C. Licensees shall be required to renew their license by submitting the appropriate fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within 30 days after the license expires shall pay a late renewal fee, in addition to the renewal fee, as set out in ~~18VAC100-20-54~~ 18VAC80-30-50.

D. The board, in its discretion and for just cause, may deny renewal of a license. Upon such denial, the applicant for renewal may request that a proceeding be held in accordance with the provision of the Administrative Process Act (§ ~~9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia).

Part IV
Reinstatement

~~18VAC100-20-81.~~ 18VAC80-30-110. Reinstatement required.

A. If a licensee fails to renew his license within 60 days after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.

1. Individuals for reinstatement shall continue to meet the standards of entry as set out in subdivisions 1 through 8 of ~~18VAC100-20-10~~ 18VAC80-30-20.

2. Individuals for reinstatement shall submit the required fee as set out in ~~18VAC100-20-54~~ 18VAC80-30-50.

B. Twenty-four months after expiration of the license, the individual may be reinstated if he can show proof of continuous, active, ethical and legal practice outside of Virginia. If not, the individual must show proof of completion of a board-approved review course which measures current competence. Credit will not be allowed for any review course which has not been approved by the board prior to administration of the course.

C. Sixty months after expiration of the license, the individual, who cannot show proof of continuous, active, ethical and legal practice outside of Virginia, shall be required to apply as a new applicant for licensure. He shall be required to meet all current education requirements and retake the board's written and practical examination.

D. The board, in its discretion and for just cause, may deny reinstatement of a license. Upon such denial, the applicant for reinstatement may request that a proceeding be held in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

E. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the board during the entire period and may be held accountable for his activities during this period. Nothing in these regulations shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure as set out in this provision.

~~18VAC100-20-85.~~ 18VAC80-30-120. Lenses and frames standards.

A. Power Tolerance (diopters).

Sphere: Plano to ±.6.50	±.13 diopter
Above ±.6.50	±2%
Cylinder: Plano - 2.00	±.13 diopter
-2.12 to -4.50	±.15 diopter
above -4.50	±4%

B. Cylinder Axis.

Cyl. Power Diopters	Degrees ±
0.12 - 0.37	7°
0.50 - 0.75	5°
0.87 - 1.50	3°
1.62 and above	2°

C. Distance Optical Center. Contribution to net horizontal prism from processing should not exceed 2/3 prism diopter. A maximum of ±2.5mm variation from the specified distance optical center is permissible in higher power lens combinations.

D. Prism Tolerances (Vertical). Contribution to imbalance from processing should not exceed 1/3 prism diopters. A maximum of 1.0mm difference in vertical level is permissible in higher power lens combinations.

E. Segment Location.

Vertical	±.1.0 mm
Horizontal	±.2.5 mm

Tilt or twist in the case of a flat-top segment, the tilt of its horizontal axis should be less than 1/2 mm in differential elevation between the segment edges.

F. Multifocal Additions.

Plano + 8.00	±.13 diopter
Above + 8.00	±.18 diopter

G. Base Curve. When specified, the base curve should be supplied within ±0.75 diopter.

H. Warpage. The cylindrical surface power induced in the base curve of a lens should not exceed 1 diopter. This recommendation need not apply within 6mm of the mounting eyewire.

I. Localized errors (aberration). Areas outside a 20mm radius from the specified major reference point or optical center need not be tested for aberration. Progressive lenses are exempt from this requirement.

~~18VAC100-20-87.~~ 18VAC80-30-130. Contact lens standards.

To fit contact lenses, the following shall be done:

1. The prescription (RX) must show evidence that contact lenses may be worn by the patient before the prescription can be filled by the licensed optician. Verbal approval from the optometrist or ophthalmologist or its agents or employees is acceptable. The licensed optician must make a notation in the patient's record of the name of the authorizing optometrist or ophthalmologist and the date of the authorization.

2. The optician must use all the following to fit contact lenses:

a. Slit Lamp;

b. Keratometer; and

c. Standardized Snellen type acuity chart.

~~18VAC100-20-90.~~ 18VAC80-30-140. Display of license.

Every person to whom a current license has been granted under this chapter shall visibly display his unaltered license in a conspicuous place in plain view of the public in the principal office in which he works. A duplicate license which has been notarized shall be posted in any branch offices.

~~18VAC100-20-100.~~ 18VAC80-30-150. Notification of change of address or name.

Notice in writing shall be given to the board in the event of any change of name or address. Such notice shall be mailed to the board within 30 days of the change of name or address. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address.

~~18VAC100-20-110.~~ 18VAC80-30-160. Grounds for disciplinary action.

A. The board is empowered to revoke, suspend, or refuse to grant or renew a license and is empowered to impose a fine up to the statutory limit, as authorized under § 54.1-202 of the Code of Virginia, per violation on a licensee for any of the following reasons:

1. Using nonprescribed controlled substances as defined in § 54.1-3401 of the Code of Virginia or alcohol at the work place during working hours;

2. Displaying professional incompetence or negligence, including but not limited to failure to comply with this part in the performance of opticianry;

3. Presenting false or fraudulent information on an application certifying possession of the qualifications required under ~~18VAC100-20-10~~ 18VAC80-30-20;

4. Violating or inducing others to violate any provisions of Chapter 1, 2, 3, or ~~17~~ 15 of Title 54.1 of the Code of Virginia, or of any other statute applicable to the practice of the profession herein regulated, or of any provisions of this chapter;

5. Publishing or causing to be published any advertisement related to opticianry that is false, deceptive, or misleading;

6. Having been convicted in any jurisdiction of a misdemeanor or felony involving sexual offense, drug distribution or physical injury, or of any felony that directly relates to the profession of opticianry. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this section. The licensee shall provide a certified copy of a final order, decree or case decision by a court or regulatory agency with the lawful authority to issue such order, decree or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;

7. Having been disciplined by another jurisdiction in the practice of opticianry. Documentary evidence of such discipline shall be submitted by the licensee to the board within 10 days after all appeal rights have expired; or

8. Allowing any person to engage in the practice of opticianry, except an optician apprentice or student enrolled in a course in a school of opticianry under the direct supervision of a licensed optician.

B. A finding of improper or dishonest conduct in the practice of the profession by a court of competent jurisdiction shall be cause for disciplinary action.

~~18VAC100-20-120.~~ 18VAC80-30-170. Accountability of licensee.

A licensee shall be responsible for his acts or omissions and for the acts of his agents or employees or his staff in the performance of opticianry services.

~~18VAC100-20-130.~~ 18VAC80-30-180. Approval of review courses.

A. Review courses set out in this chapter shall be approved by the board, except those provided by institutions, schools and universities approved by the State Council of Higher Education for Virginia, for which continuing education units are awarded. Training courses requiring board approval shall be approved by the board prior to commencing in accordance with subsection B of this section.

B. Training activities for which experience credit may be granted must be conducted in general conformance with the International Association for Continuing Education and Training's "Criteria and Guidelines for Quality Continuing Education and Training Programs: the CEU and Other Measurement Units," 1998. The board reserves the right to waive any of the requirements of the association's guidelines on a case-by-case basis. Only classroom, laboratory and field trip contact time will be used to compute training credits. No credit will be given for breaks, meals, or receptions.

1. Organization. The board will only approve training offered by a sponsor who is an identifiable organization with a mission statement outlining its functions, structure, process and philosophy, and that has a staff of one or more persons with the authority to administer training.

2. Training records. The board will only approve training offered by a sponsor who maintains training records for all participants for a minimum of five years, and who has a written policy on retention and release of training records.

3. Instructors. The board will only approve training conducted by personnel who have demonstrated competence in the subject being taught, an understanding of the learning objective, a knowledge of the learning process to be used, and a proven ability to communicate.

4. Objectives. The board will only approve courses that have a series of stated objectives that are consistent with the job requirements of an optician. The training content must be consistent with those objectives.

5. Course completion requirements. For successful completion of a training program, participants must attend 90% or more of the class contact time and must demonstrate their learning through written examinations, completion of a project, self-assessment, oral examination, or other assessment technique.

C. The board shall consider the following information, to be submitted by the instructor, institution, school or university on forms provided by the board, at least 45 days prior to the scheduled training activity:

1. Course information.

a. Course title;

b. Planned audience;

c. Name of sponsor;

d. Name, address, phone number of contact person;

e. Schedule presentation dates;

f. Detailed course schedule, hour-by-hour;

g. List of planned breaks;

h. Scheduled presentation location(s); and

i. Relevancy of course to opticianry licensing.

2. Instructor qualifications.

a. Name of instructor;

b. Title of instructor; and

c. Summary of qualifications to teach this course.

3. Training materials.

a. Course objectives -- A listing of the course objectives stated in terms of the skills, knowledge, or attitude the participant will be able to demonstrate as a result of the training;

b. Course outline -- A detailed outline showing the planned activities that will occur during the training program, including major topics, planned presentation sequence, laboratory and field activities, audio-visual presentations, and other major activities;

c. Course reference materials -- A list of the name, publisher and publication date for commercially available publications; for reference materials developed by the course sponsor or available exclusively through the course, a copy of the reference materials;

d. Audio-visual support materials -- A listing of any commercially available audio-visual support material that will be used in the program; a brief description of any sponsor or instructor generated audio-visual material that will be used; and

e. Handouts -- Identification of all commercially available handout material that will be used; copies of all other planned handouts.

4. Determination of successful completion. A description of the means that will be used to determine the successful completion of the training program by individual attendees, such as examinations, projects, personal evaluations by the instructor, or other recognized evaluation techniques.

D. Recurring training programs. If there are plans to present the same course of instruction routinely at multiple locations with only minor modifications and changes, the board may approve the overall program rather than individual presentations if so requested by the sponsor.

1. The board shall consider all of the information listed above except those items related to specific offerings of the course.

2. Board approval may be granted for a specific period of time or for an indefinite period.

3. Board approval will apply only to those specific offerings certified by the sponsoring organization as having been conducted by instructors meeting the established criteria and in accordance with the board-approved courses, outlines and objectives.

4. To maintain approval of the program, changes made to the program since initial approval must be submitted to the board for review and approval. Changes must be approved by the board prior to any training subsequent to the changes.

NOTICE: The forms administering this regulation are not being published; however, the forms are available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS ~~(18VAC100-20)~~ (18VAC80-30)

License and Examination Application, 11LIC (rev. 2004).

Contact Lens Endorsement Application, 11CLEND (rev. 2004).

Reciprocity Application, 11REC (eff. 2004).

Reinstatement Application, 11REI (rev. 2004).

Voluntary Practice Registration Application, 11VOLREG (eff. 7/03).

Sponsor Certification for Voluntary Practice Registration, 11VRSPCERT (eff. 7/03).

DOCUMENTS INCORPORATED BY REFERENCE ~~(18VAC100-20)~~ (18VAC80-30)

Criteria and Guidelines for Quality Continuing Education and Training Programs: the CEU and Other Measurement Units, International Association for Continuing Education and Training, 1998.

VA.R. Doc. No. R12-3262; Filed June 19, 2012, 1:12 p.m.

BOARD FOR OPTICIANS

Final Regulation

REGISTRAR'S NOTICE: Enactments 34 through 37 of Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Hearing Aid Specialists with the Board for Opticians to create the Board for Hearing Aid Specialists and Opticians. This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2- 4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Hearing Aid Specialists and Opticians will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC100-11. Public Participation Guidelines (repealing 18VAC100-11-10 through 18VAC100-11-110).**

Statutory Authority: §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email opticians@dpor.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Opticians with the Board for Hearing Aid Specialists effective July 1, 2012. The Public Participation Guidelines (PPGs) for the Board for

Opticians are repealed and the PPGs for the Board for Hearing Aid Specialists are amended to reflect the new board name.

VA.R. Doc. No. R12-3265; Filed June 19, 2012, 1:11 p.m.

BOARD OF PHARMACY

Final Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20, 18VAC110-20-275, 18VAC110-20-690, 18VAC110-20-700; adding 18VAC110-20-685, 18VAC110-20-725, 18VAC110-20-726, 18VAC110-20-727, 18VAC110-20-728).**

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

Effective Date: August 15, 2012.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

Chapter 28 of the 2010 Acts of the Assembly requires the Board of Pharmacy to promulgate regulations to authorize (i) community services boards (CSBs) and behavioral health authorities (BHAs) to possess, repackage, and deliver or administer medications and (ii) crisis stabilization units to store and administer a stock of drugs needed for emergency treatment. The amendments set forth requirements for registration of a CSB or BHA to possess, repackage, and deliver or administer drugs and for a program to train nonpharmacists in repackaging for CSBs or BHAs. The regulations include labeling, storage, recordkeeping, destruction, and other requirements for repackaging in these facilities (which do not have a pharmacy); persons authorized to repackage; and information to clients about repackaged drugs. In addition, the regulations include curricula and instructional criteria for approval of repackaging training programs and for expiration and renewal of program approval and include provisions for stocking, recordkeeping, and administration of Schedule VI controlled substances at a crisis stabilization unit for immediate treatment of patients as necessary.

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

18VAC110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	$180
2. Pharmacy intern registration	$15
3. Pharmacy technician registration	$25
4. Pharmacy permit	$270
5. Permitted physician licensed to dispense drugs	$270
6. Medical equipment supplier permit	$180
7. Humane society permit	$20
8. Nonresident pharmacy	$270
9. Controlled substances registrations	$90
10. Innovative program approval. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.	$250
11. Approval of a pharmacy technician training program	$150
12. Approval of a continuing education program	$100
13. Approval of a repackaging training program	$50

D. Annual renewal fees.

1. Pharmacist active license – due December 31	$90
2. Pharmacist inactive license – due December 31	$45
3. Pharmacy technician registration – due December 31	$25
4. Pharmacy permit – due April 30	$270
5. Physician permit to practice pharmacy – due February 28	$270
6. Medical equipment supplier permit – due February 28	$180
7. Humane society permit – due February 28	$20
8. Nonresident pharmacy – due April 30	$270
9. Controlled substances registrations – due February 28	$90
10. Innovative program continued approval based on board order not to exceed $200 per approval period.	

11. Approval of a pharmacy technician training program	$75 every two years
12. Approval of a repackaging training program	$30 every two years

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date or within two years in the case of a pharmacy technician training program. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	$30
2. Pharmacist inactive license	$15
3. Pharmacy technician registration	$10
4. Pharmacy permit	$90
5. Physician permit to practice pharmacy	$90
6. Medical equipment supplier permit	$60
7. Humane society permit	$5
8. Nonresident pharmacy	$90
9. Controlled substances registrations	$30
10. Approval of a pharmacy technician training program	$15
11. Approval of a repackaging training program	$10

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date, or more than two years after the expiration date in the case of a pharmacy technician training program, shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	$210
2. Pharmacist license after revocation or suspension	$500
3. Pharmacy technician registration	$35
4. Pharmacy technician registration after revocation or suspension	$125
5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:	
a. Pharmacy permit	$240
b. Physician permit to practice pharmacy	$240
c. Medical equipment supplier permit	$210
d. Humane society permit	$30
e. Nonresident pharmacy	$115
f. Controlled substances registration	$180
g. Approval of a pharmacy technician training program	$75
h. Approval of a repackaging training program	$50

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	$50
2. Change of ownership for any facility	$50
3. Inspection for remodeling or change of location for any facility	150
4. Reinspection of any facility	$150
5. Board-required inspection for a robotic pharmacy system	$150
6. Board-required inspection of an innovative program location	$150
7. Change of pharmacist responsible for an approved innovative program	$25

H. Miscellaneous fees.

1. Duplicate wall certificate	$25
2. Returned check	$35

I. For the annual renewal due on the stated dates, the following fees shall be imposed for a license, permit or registration:

1. Pharmacist active license – December 31, 2009	$50
2. Pharmacist inactive license – December 31, 2009	$25
3. Pharmacy technician registration – December 31, 2009	$15

4. Pharmacy permit – April 30, 2010	$210
5. Physician permit to practice pharmacy – February 28, 2010	$210
6. Medical equipment supplier permit – February 28, 2010	$140
7. Humane society permit – February 28, 2010	$20
8. Nonresident pharmacy – April 30, 2010	$210
9. Controlled substances registrations – February 28, 2010	$50

18VAC110-20-275. Delivery of dispensed prescriptions.

A. Pursuant to § 54.1-3420.2 B of the Code of Virginia, in addition to direct hand delivery to a patient or patient's agent or delivery to a patient's residence, a pharmacy may deliver ~~prescriptions~~ a dispensed prescription drug order for Schedule VI controlled substances to another pharmacy, to a practitioner of the healing arts licensed to practice pharmacy or to sell controlled substances, or to an authorized person or entity holding a controlled substances registration issued for this purpose in compliance with this section and any other applicable state or federal law. Prescription drug orders for Schedule II through Schedule V controlled substances may not be delivered to an alternate delivery location unless such delivery is authorized by federal law and regulations of the board.

B. Delivery to another pharmacy.

1. One pharmacy may fill prescriptions and deliver the prescriptions to a second pharmacy for patient pickup or direct delivery to the patient provided the two pharmacies have the same owner, or have a written contract or agreement specifying the services to be provided by each pharmacy, the responsibilities of each pharmacy, and the manner in which each pharmacy will comply with all applicable federal and state law.

2. Each pharmacy using such a drug delivery system shall maintain and comply with all procedures in a current policy and procedure manual that includes the following information:

a. A description of how each pharmacy will comply with all applicable federal and state law;

b. The procedure for maintaining required, retrievable dispensing records to include which pharmacy maintains the hard-copy prescription, which pharmacy maintains the active prescription record for refilling purposes, how each pharmacy will access prescription information necessary to carry out its assigned responsibilities, method of recordkeeping for identifying the pharmacist or pharmacists responsible for dispensing the prescription and counseling the patient, and how and where this information can be accessed upon request by the board;

c. The procedure for tracking the prescription during each stage of the filling, dispensing, and delivery process;

d. The procedure for identifying on the prescription label all pharmacies involved in filling and dispensing the prescription;

e. The policy and procedure for providing adequate security to protect the confidentiality and integrity of patient information;

f. The policy and procedure for ensuring accuracy and accountability in the delivery process;

g. The procedure and recordkeeping for returning to the initiating pharmacy any prescriptions that are not delivered to the patient; and

h. The procedure for informing the patient and obtaining consent for using such a dispensing and delivery process.

3. Drugs waiting to be picked up at or delivered from the second pharmacy shall be stored in accordance with subsection A of 18VAC110-20-200.

C. Delivery to a practitioner of the healing arts licensed by the board to practice pharmacy or to sell controlled substances or other authorized person or entity holding a controlled substances registration authorized for this purpose.

1. A prescription may be delivered by a pharmacy to the office of such a practitioner or other authorized person provided there is a written contract or agreement between the two parties describing the procedures for such a delivery system and the responsibilities of each party.

2. Each pharmacy using this delivery system shall maintain a policy and procedure manual that includes the following information:

a. Procedure for tracking and assuring security, accountability, integrity, and accuracy of delivery for the dispensed prescription from the time it leaves the pharmacy until it is handed to the patient or agent of the patient;

b. Procedure for providing counseling;

c. Procedure and recordkeeping for return of any prescription medications not delivered to the patient;

d. The procedure for assuring confidentiality of patient information; and

e. The procedure for informing the patient and obtaining consent for using such a delivery process.

3. Prescriptions waiting to be picked up by a patient at the alternate site shall be stored in a lockable room or lockable cabinet, cart, or other device that cannot be easily moved and that shall be locked at all times when not in use. Access shall be restricted to the licensed practitioner of the healing arts or the responsible party listed on the application for the controlled substances registration, or either person's designee.

D. The contracts or agreements and the policy and procedure manuals required by this section for alternate delivery shall be maintained both at the originating pharmacy as well as the alternate delivery site.

E. A controlled substances registration as an alternate delivery site shall only be issued to an entity without a prescriber or pharmacist present at all times the site is open if there is a valid patient health or safety reason not to deliver dispensed prescriptions directly to the patient and if compliance with all requirements for security, policies, and procedures can be reasonably assured.

Part XVI
Controlled Substances Registration for Other Persons or Entities

18VAC110-20-685. Definitions for controlled substances registration.

For purposes of this part, the following definitions shall apply:

"BHA" means a behavioral health authority facility licensed by the Department of Behavioral Health and Developmental Services that holds a controlled substances registration issued by the board.

"CSB" means a community services board facility licensed by the Department of Behavioral Health and Developmental Services that holds a controlled substances registration issued by the board.

~~Part XVI~~
~~Controlled Substances Registration for Other Persons or Entities~~

18VAC110-20-690. Persons or entities authorized or required to obtain a controlled substances registration.

A. A person or entity which maintains or intends to maintain a supply of Schedule II through Schedule VI controlled substances, other than manufacturers' samples, in accordance with provisions of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) may apply for a controlled substances registration on forms approved by the board.

B. Persons or entities which may be registered by the board shall include, but not be limited to, hospitals without in-house pharmacies, nursing homes without in-house pharmacies that use automated drug dispensing systems, ambulatory surgery centers, outpatient clinics, alternate delivery sites, crisis stabilization units, and emergency medical services agencies provided such persons or entities are otherwise authorized by law and hold required licenses or appropriate credentials to administer the drugs for which the registration is being sought.

C. In determining whether to register an applicant, the board shall consider factors listed in subsections A and D of § 54.1-3423 of the Code of Virginia and compliance with applicable requirements of this chapter.

1. The proposed location shall be inspected by an authorized agent of the board prior to issuance of a controlled substances registration.

2. Controlled substances registration applications that indicate a requested inspection date, or requests that are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

3. Requested inspection dates that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

4. Any person wishing to change an approved location of the drug stock, make structural changes to an existing approved drug storage location, or make changes to a previously approved security system shall file an application with the board and be inspected [~~consistent with subsection B of this section~~].

5. Drugs shall not be stocked within the proposed drug storage location or moved to a new location until approval is granted by the board.

D. The application shall be signed by a person who will act as a responsible party for the controlled substances. The responsible party may be a prescriber, nurse, pharmacist, or pharmacy technician for alternate delivery sites or other person approved by the board who is authorized to administer ~~or otherwise possess~~ the controlled substances ~~for that type entity~~.

E. The board may require a person or entity to obtain a controlled substances registration upon a determination that Schedule II through VI controlled substances have been obtained and are being used as common stock by multiple practitioners and that one or more of the following factors exist:

1. A federal, state, or local government agency has reported that the person or entity has made large purchases of controlled substances in comparison with other persons or entities in the same classification or category.

2. The person or entity has experienced a diversion, theft, or other unusual loss of controlled substances which requires reporting pursuant to § 54.1-3404 of the Drug Control Act.

3. The person or entity has failed to comply with recordkeeping requirements for controlled substances.

4. The person or entity or any other person with access to the common stock has violated any provision of federal, state, or local law or regulation relating to controlled substances.

18VAC110-20-700. Requirements for supervision for controlled substances registrants.

A. A practitioner licensed in Virginia shall provide supervision for all aspects of practice related to the maintenance and use of controlled substances as follows:

1. In a hospital or nursing home without an in-house pharmacy, a pharmacist shall supervise.

2. In an emergency medical services agency, the operational medical director shall supervise.

3. For any other type of applicant or registrant, a pharmacist or a prescriber whose scope of practice is consistent with the practice of the applicant or registrant and who is approved by the board may provide the required supervision.

B. The supervising practitioner shall approve the list of drugs which may be ordered by the holder of the controlled substances registration; possession of controlled substances by the entity shall be limited to such approved drugs. The list of drugs approved by the supervising practitioner shall be maintained at the address listed on the controlled substances registration.

C. Access to the controlled substances shall be limited to (i) the supervising practitioner or to those persons who are authorized by the supervising practitioner and who are authorized by law to administer drugs in Virginia, (ii) such other persons who have successfully completed a training program for repackaging of prescription drug orders in a CSB or BHA as authorized in § 54.1-3420.2 of the Code of Virginia, or ~~to~~ (iii) other such persons as designated by the supervising practitioner or the responsible party to have access in an emergency situation. If approved by the supervising practitioner, pharmacy technicians may have access for the purpose of delivering controlled substances to the registrant, stocking controlled substances in automated dispensing devices, conducting inventories, audits and other recordkeeping requirements, ~~and~~ overseeing delivery of dispensed prescriptions at an alternate delivery site, and repackaging of prescription drug orders retained by a CSB or BHA as authorized in § 54.1-3420.2 of the Code of Virginia. Access to stock drugs in a crisis stabilization unit shall be limited to prescribers, nurses, or pharmacists.

D. The supervising practitioner shall establish procedures for and provide training as necessary to ensure compliance with all requirements of law and regulation, including, but not limited to, storage, security, and recordkeeping.

E. Within 14 days of a change in the responsible party or supervising practitioner assigned to the registration, either the responsible party or outgoing responsible party shall inform the board and a new application shall be submitted indicating the name and license number, if applicable, of the new responsible party or supervising practitioner.

18VAC110-20-725. Repackaging by a CSB or BHA.

A. Definition. For purposes of this section, "repackaging" shall mean removing a drug from a container already dispensed and labeled by a pharmacy or medical practitioner authorized to dispense, for a particular client of a CSB or BHA, and placing it in a container designed for a person to be able to repackage his own dispensed prescription medications to assist with self-administration and compliance with dosage instructions. Such repackaging shall not include the preparation of a patient-specific label that includes drug name, strength, or directions for use or any other process restricted to a pharmacist or pharmacy technician under the direct supervision of a pharmacist.

B. Persons authorized to repackage. Repackaging shall be performed by a pharmacist, pharmacy technician, nurse, or such other person who has successfully completed a board-approved training program for repackaging of prescription drug orders as authorized in § 54.1-3420.2 of the Code of Virginia. A CSB or BHA using such other person shall maintain documentation of completion of an approved training program for at least one year from date of termination of employment or cessation of repackaging activities.

C. Requirements for repackaging.

1. The repackaging of a dispensed prescription drug order pursuant to § 54.1-3420.2 of the Code of Virginia shall only be done at a CSB or BHA.

2. The repackaging of dispensed prescription drugs shall be restricted to solid oral dosage forms and a maximum of a 14-day supply of drugs.

3. The drug container used for repackaging pursuant to this section shall bear a label containing the client's first and last name, and name and 24-hour contact information for the CSB or BHA.

4. A clean, well-closed container that assists the client with self-administration shall be used when multiple doses of a repackaged drug are provided to the client at one time.

5. A prescription drug order shall not be repackaged beyond the assigned expiration date noted on the prescription label of the dispensed drug, if applicable, or beyond one year from the date the drug was originally dispensed by a pharmacy, whichever date is earlier.

D. Written information for client. At the time a repackaged drug is initially given to a client, and upon any subsequent change in the medication order, the client shall be provided written information about the name and strength of the drug and the directions for use. Such written information shall have been prepared by a pharmacy or by a nurse at the CSB or BHA.

E. Retention, storage, and destruction of repackaged drugs.

1. Any portion of a client's prescription drug order not placed into a container intended to assist with self-administration may be either given to the client or retained by the CSB or BHA for subsequent repackaging. If retained by the CSB or BHA, the remaining portion shall be stored within the board-approved drug storage location in the original labeled container, and shall only be used for the client for whom the drug was originally dispensed.

2. Any portion of a prescription drug order remaining at the CSB or BHA that has exceeded any labeled expiration

date or one year from the original pharmacy dispensing date on the label shall be separated from unexpired drugs, stored within a designated area of the board-approved drug storage location, and destroyed within 30 days of expiration with the written agreement of the client. Remaining portions of discontinued prescription drug orders retained by the CSB or BHA shall also be separated from active stock and either returned to the client or destroyed within 30 days of discontinuance with the written agreement of the client.

F. Recordkeeping.

1. A record of repackaging shall be made and maintained for one year from the date of repackaging and shall include the following:

a. Date of repackaging;

b. Name of client;

c. Prescription number of the originally dispensed prescription drug order;

d. Pharmacy name;

e. Drug name and strength;

f. Quantity of drug repackaged; and

g. Initials of the person performing the repackaging and verifying the accuracy of the repackaged drug container.

2. A record of destruction shall be made and maintained for one year for any prescription drug orders destroyed by the CSB or BHA and shall include the following:

a. Date of destruction [~~:~~]

b. Name of client;

c. Prescription number of the originally dispensed prescription drug order;

d. Drug name and strength;

e. Quantity of drug destroyed; and

f. Initials of the person performing the destruction.

18VAC110-20-726. Criteria for approval of repackaging training programs.

A. Application. Any person wishing to apply for approval of a repackaging training program shall submit the application fee prescribed in 18VAC110-20-20 and an application on a form approved by the board and shall meet the criteria established in this section. The application shall name a program director who is responsible for compliance with this section.

B. Curriculum. The curriculum for a repackaging training program shall include instruction in current laws and regulations applicable to a CSB or BHA for the purpose of assisting a client with self-administration pursuant to § 54.1-3420.2 of the Code of Virginia and in the following repackaging tasks:

1. Selection of an appropriate container;

2. Proper preparation of a container in accordance with instructions for administration;

3. Selection of the drug;

4. Counting of the drug;

5. Repackaging of the drug within the selected container;

6. Maintenance of records;

7. Proper storage of drugs;

8. Translation of medical abbreviations;

9. Review of administration records and prescriber's orders for the purpose of identifying any changes in dosage administration;

10. Reporting and recording the client's failure to take medication;

11. Identification, separation, and removal of expired or discontinued drugs; and

12. Prevention and reporting of repackaging errors.

C. Instructors and program director. Instructors for the program shall be either (i) a pharmacist with a current license in any jurisdiction and who is not currently suspended or revoked in any jurisdiction in the United States or (ii) a pharmacy technician with at least one year of experience performing technician tasks who holds a current registration in Virginia or current PTCB certification and who is not currently suspended or revoked in any jurisdiction in the United States. The program director shall maintain a list of instructors for the program.

D. Program requirements.

1. The length of the program shall be sufficient to prepare a program participant to competently perform repackaging consistent with § 54.1-3420.2 of the Code of Virginia and 18VAC110-20-725.

2. The program shall include a post-training assessment to demonstrate the knowledge and skills necessary for repackaging with safety and accuracy.

3. A program shall provide a certificate of completion to participants who successfully complete the program and provide verification of completion of the program for a participant upon request by a CSB, BHA, or the board.

4. The program shall maintain records of training completion by persons authorized to repackage in accordance with § 54.1-3420.2 of the Code of Virginia. Records shall be retained for two years from date of completion of training or termination of the program.

5. The program shall report within 14 days any substantive change in the program to include a change in program name, program director, name of institution or business if applicable, address, program content, length of program, or location of records.

E. Expiration and renewal of program approval. A repackaging training program approval expires after two years, after which the program may apply for renewal. For

continued approval, the program shall submit the renewal application, renewal fee, and a self-evaluation report on a form provided by the board at the time of renewal notification. Renewal of a program's approval is at the discretion of the board, and the decision to renew shall be based on documentation of continued compliance with the criteria set forth in this section.

18VAC110-20-727. Pharmacists repackaging for clients of a CSB or BHA.

As an alternative to repackaging as defined in 18VAC110-20-725, a pharmacist at a CSB or BHA may repackage a client's prescription drugs that have been dispensed by another pharmacy into compliance packaging that complies with the requirements of 18VAC110-20-340 B and subsections G, H, and J of 18VAC110-20-725. A primary provider pharmacy may also provide this service in compliance with the provisions of 18VAC110-20-535.

18VAC110-20-728. Drugs for immediate treatment in crisis stabilization units.

A. In accordance with § 54.1-3423 of the Code of Virginia, a crisis stabilization unit shall apply for and obtain a controlled substances registration in order to maintain a stock of Schedule VI controlled substances for immediate treatment of patients in crisis. Schedule II through V controlled substances shall not be stocked. The responsible party listed on the application shall be a nurse who regularly administers controlled substances at the crisis stabilization unit and the supervising practitioner shall be either the medical director for the unit or a pharmacist from a provider pharmacy.

B. In consultation with a provider pharmacist, the medical director for the unit shall determine the list of controlled substances to be stocked at the crisis stabilization unit. The list shall be limited to Schedule VI controlled substances and only those drugs routinely used for treatment of patients admitted for crisis stabilization. Only drugs on this drug list may be stocked.

C. A nurse administering a drug from this stock pursuant to an oral order of a prescriber in accordance with § 54.1-3423 of the Code of Virginia shall record such order in the patient's medical record.

D. Records.

1. A record shall be maintained of all drugs received as stock by the crisis stabilization unit.

2. A record shall be made documenting administration or other authorized disposition of stocked drugs that includes the following:

a. Name of patient;

b. Date and time of administration;

c. Drug name, strength, and quantity administered;

d. Name or initials of person administering; and

e. Prescriber name.

3. Records shall be maintained at the same location listed on the controlled substances registration or, if maintained in an off-site database, retrieved and made available for inspection or audit within 48 hours of a request by the board or an authorized agent. Any computerized system used to maintain records shall also provide retrieval via computer monitor display or printout of the history for drugs administered during the past two years. It shall also have the capacity of producing a printout of any data which the registrant is responsible for maintaining.

4. Manual records may be maintained as an electronic image that provides an exact image of the document and is clearly legible.

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

FORMS (18VAC110-20)

Application for Registration as a Pharmacy Intern (rev. 8/07).

Affidavit of Practical Experience, Pharmacy Intern (rev. 8/07).

Application for Licensure as a Pharmacist by Examination (rev. 11/09).

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 3/11).

Application for Approval of a Continuing Education Program (rev. 8/07).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 6/09).

Application for License to Dispense Drugs (rev. 8/07).

Application for a Pharmacy Permit (rev. 6/10).

Application for a Nonresident Pharmacy Registration (rev. 7/08).

Application for a Permit as a Medical Equipment Supplier (rev. 3/09).

Application for a Controlled Substances Registration Certificate (rev. 4/09).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 8/07).

Closing of a Pharmacy (rev. 8/07).

Application for Approval of an Innovative (Pilot) Program (rev. 8/07).

Pharmacy Technician Registration Instructions and Application (rev. 3/09).

Instructions for Reinstating a Pharmacy Technician Registration (rev. 3/11).

Application for Approval of a Pharmacy Technician Training Program (rev. 8/07).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

Application for Reinstatement of Registration as a Pharmacy Intern (eff. 9/07).

Affidavit for Limited-Use Pharmacy Technician (rev. 8/07).

Limited-Use Pharmacy Technician Registration Instructions and Application (rev. 7/08).

Registration for a Pharmacy to be a Collection Site for Donated Drugs (eff. 4/09).

Application for Approval of Repackaging Training Program (eff. 12/10).

VA.R. Doc. No. R11-2366; Filed June 19, 2012, 1:30 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Final Regulation

REGISTRAR'S NOTICE: Enactments 38 through 43 of Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Professional Soil Scientists and Wetland Professionals with the Board for Geology to create the Board for Professional Soil Scientists, Wetland Professionals, and Geologists.

This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Professional Soil Scientists, Wetland Professionals, and Geologists will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC145-11. Public Participation Guidelines (amending 18VAC145-11-10, 18VAC145-11-20).**

Statutory Authority: §§ 2.2-4007.02 and 54.1-201 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email soilscientist@dpor.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Geology with the Board for Professional Soil Scientists and Wetland Professionals effective July 1, 2012. The Public Participation Guidelines (PPGs) for the Board for Professional Soil Scientists and Wetland Professionals are amended to reflect the new board name, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, and will remain in effect for the newly merged board as the PPGs for the Board for Geology are repealed.

Part I
Purpose and Definitions

18VAC145-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Board for Professional Soil Scientists ~~and,~~ Wetland Professionals, and Geologists. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC145-11-20. Definitions.

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

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Board for Professional Soil Scientists ~~and,~~ Wetland Professionals, and Geologists, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal

or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

VA.R. Doc. No. R12-3267; Filed June 19, 2012, 1:12 p.m.

Final Regulation

REGISTRAR'S NOTICE: Enactments 38 through 43 of Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Professional Soil Scientists and Wetland Professionals with the Board for Geology to create the Board for Professional Soil Scientists, Wetland Professionals, and Geologists. The following action transfers the Board of Geology regulations numbered 18VAC70-20 to the Board for Professional Soil Scientists, Wetland Professionals, and Geologists and renumbers the regulations as 18VAC145-40.

This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Professional Soil Scientists, Wetland Professionals, and Geologists will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC145-40. Regulations for the Geology Certification Program formerly 18VAC70-20-10 through 18VAC70-20-150; (adding 18VAC145-40-10 through 18VAC145-40-150).**

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

Effective Date: August 15, 2012.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email soilscientists@dpor.virginia.gov.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly merged the Board for Geology with the Board for Professional Soil Scientists and Wetland Professionals based on a recommendation of Governor McDonnell's Commission on Government Reform and Restructuring. The regulatory action amends the Board for Geology regulations to reflect the new board name and renumbers the regulations so that they are placed under the new board in the Virginia Administrative Code.

CHAPTER ~~20~~ 40

~~RULES AND~~ REGULATIONS FOR THE ~~VIRGINIA BOARD FOR~~ GEOLOGY CERTIFICATION PROGRAM

Part I

General

~~18VAC70-20-10.~~ 18VAC145-40-10. Definitions.

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

"Board" means the Board for ~~Geology~~ Professional Soil Scientists, Wetland Professionals, and Geologists.

"Geologist" means a person engaged in the public practice of geology.

"Geology" means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases and other natural materials.

"Practice of geology" means the performance of any service or work for the general public wherein the principles and methods of geology are applied.

"Qualified geologist" means an uncertified person who possesses all the qualifications specified in § ~~54.1-1403~~ 54.1-2208.2 of the Code of Virginia for certification.

"Related geological science degree" means a degree that shall include, but not be limited to, a degree in economic geology or petroleum geology.

"Responsible charge" means the direct control and supervision of the practice of geology.

"Supervision" means quality control review of all significant data collection, interpretation and conclusions.

"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the board through certification.

~~18VAC70-20-30.~~ 18VAC145-40-20. Fees.

All fees for application, examination, renewal, and reinstatement shall be established by the board pursuant to § 54.1-201 of the Code of Virginia. All fees are nonrefundable and shall not be prorated.

1. The application fee for certification shall be $40.

2. The fee for renewal of certification shall be $35.

3. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

4. The penalty fee for late renewal shall be $25 in addition to the renewal fee.

5. The reinstatement fee shall be $40.

~~18VAC70-20-40.~~ 18VAC145-40-30. Expiration, renewal and fee of certificate holders.

A. Certificates issued under this chapter shall expire on August 31 of the odd-numbered year following the date of issuance. Certificate holders shall be notified by mail of the fee and the procedure for certificate renewal at least 45 days before the certificate expires. Each certificate holder desiring to renew his certificate shall submit the renewal notice with the appropriate fee before the certificate expires.

B. There shall be a penalty fee for late renewal assessed in addition to the renewal fee for any certificate holder failing to renew the certificate within 30 days following the date of expiration.

C. Failure to receive written notice from the Department of Professional and Occupational Regulation does not relieve the regulant from the requirement to renew his certificate. If the certificate holder fails to receive the renewal notice, a copy of the certificate may be submitted with the required fee.

D. The date a fee is received by the Department of Professional and Occupational Regulation, or its agent, will be used to determine whether a penalty fee or the requirement for reinstatement of a certificate is applicable.

E. Revoked or suspended certificates are not renewable until reinstated by the board.

~~18VAC70-20-50.~~ 18VAC145-40-40. Reinstatements.

If the certificate holder fails to renew the certificate within six months following the expiration date, the certificate holder will be required to apply for reinstatement of the certificate. The board may grant reinstatement of the certificate, or require requalification or reexamination, or both. The application fee for reinstatement of a certificate shall be the amount established in ~~18VAC70-20-30~~ 18VAC145-40-20.

~~18VAC70-20-60.~~ 18VAC145-40-50. Status of certification during the period prior to reinstatement.

A. Reinstated certifications shall continue to have the same certification number and shall expire on August 31 of the odd-numbered year following the date of reinstatement.

B. Reinstated certifications shall be regarded as having been continuously licensed without interruption. Therefore, the holder of the reinstated certification shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period.

C. Certifications which are not renewed or reinstated shall be regarded as expired from the date of the expiration forward.

~~18VAC70-20-70.~~ 18VAC145-40-60. Use of seal.

A certified professional geologist may apply a rubber stamp or preprinted seal to final and complete cover sheets and to each original sheet of plans or drawings prepared or reviewed and approved by the regulant. The seal may be applied to the cover sheet of technical reports and specifications prepared or reviewed and approved by the regulant.

1. All seal imprints on final documents shall be signed.

2. Application of the seal and signature shall indicate acceptance of responsibility for work shown thereon.

3. The seal shall conform in detail and size to the design illustrated below:

*The number referred to is the number, usually three or four digits, as shown on the wall certificate and is the license renewal number issued each biennium as indicated on the licensee's pocket card. The number will not change every two years, but is permanent.

Part II
Entry

~~18VAC70-20-80.~~ 18VAC145-40-70. Qualifications for certification.

A. Each applicant for certification as a certified professional geologist in Virginia shall:

1. Make application on forms provided by the board;

2. Be of ethical character;

3. Hold a baccalaureate or higher degree from an accredited college or university with a major in geology, engineering geology, geological engineering or a related geological science. In the absence of one of the aforementioned degrees, each applicant shall provide evidence of the satisfactory completion of 30 semester hours (or the equivalent) of geological science courses including, but not limited to, the following subjects:

a. Stratigraphy;

b. Structural geology;

c. Mineralogy;

d. Paleontology;

e. Petrology;

f. Geomorphology; and

g. Field geology.

At least 12 semester hours must have been completed in four of the seven subjects listed in this subsection.

4. Provide the board with written documentation that demonstrates that the courses satisfactorily completed by the applicant are equivalent to those required by this section.

5. Have at least seven years of geological work that shall include either a minimum of three years of geological work under the supervision of a qualified or certified professional geologist, or a minimum of three years of experience in responsible charge of geological work. The work shall include, but not be limited to, one or more of the following areas:

a. Mineralogy.

(1) Identify and classify major rock types.

(2) Identify mineral assemblages.

(3) Determine probable genesis and sequence of mineral assemblages.

(4) Identify minerals on the basis of chemical composition.

(5) Predict subsurface mineral characteristics on the basis of exposures and drillholes.

b. Petrography/petrology.

(1) Identify and classify major rock types.

(2) Determine physical properties of rocks.

(3) Determine chemical properties of rocks.

(4) Determine types or degrees of rock alteration.

(5) Determine suites of rock types.

c. Geochemistry.

(1) Establish analytical objectives and approaches.

(2) Evaluate geochemical data.

(3) Construct models based on results of geochemical analysis.

(4) Make recommendations based upon results of geochemical analyses.

d. Hydrogeology.

(1) Design and interpret hydrologic testing programs.

(2) Utilize chemical data to evaluate hydrogeologic conditions.

(3) Apply geophysical methods to analyze hydrogeologic conditions.

(4) Determine physical and chemical properties of aquifers and vadose zones.

(5) Determine groundwater flow systems.

(6) Evaluate groundwater resources.

(7) Evaluate groundwater quality.

(8) Design wells and drilling programs.

(9) Develop groundwater resource management plans.

(10) Plan and evaluate remedial action programs.

e. Engineering geology.

(1) Provide geological information and interpretations for engineering design.

(2) Identify and evaluate potential seismic and other geologic hazards.

(3) Provide geologic consultation during and after construction.

(4) Develop and interpret engineering geology maps and sections.

(5) Evaluate materials resources.

(6) Define and establish site selection and evaluation criteria.

(7) Design and implement field and laboratory programs.

(8) Describe and sample soils for geologic analysis and materials properties testing.

f. Mining geology.

(1) Formulate exploration programs.

(2) Implement field investigations on prospects.

(3) Perform geologic interpretations for mineral reserves.

(4) Perform economic analyses/appraisals.

(5) Provide geologic interpretations for mine development and production activities.

(6) Provide geologic interpretations for mine abandonments, closures, or restorations.

g. Petroleum geology.

(1) Formulate exploration programs.

(2) Implement field investigations on prospects.

(3) Perform geologic interpretations of physical properties and hydrocarbon reserves.

(4) Perform petroleum economic analyses/appraisals.

(5) Provide geologic interpretations for development and production activities.

(6) Provide geologic interpretations for abandonments, closures, or restorations.

B. Each year of full-time undergraduate study in the geological sciences shall count as one-half year of experience up to a maximum of two years, and each year of full-time graduate study shall count as a year of experience up to a maximum of three years. Credit for undergraduate and graduate study shall in no case exceed a total of four years toward meeting the requirements for at least seven years of geological work. The board may consider in lieu of the above-described geological work, the cumulative total of geological work or geological research of persons occupying research or post-graduate positions as well as those teaching geology courses at the college or university level, provided such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the geological work required above.

C. A year of full-time employment is a minimum of 1,760 hours or 220 workdays in a 12-month period. More than 1,760 hours or 220 workdays during a 12-month period shall not be considered as more than one year of full-time experience. Partial credit may be given for actual hours of work or workdays experience if the applicant works as a geologist less than full time.

D. Each applicant shall successfully pass an appropriate examination approved by the board and designed to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of the public practice of geology.

~~18VAC70-20-90.~~ 18VAC145-40-80. Waiver of examination.

The board may waive the examination requirement for any applicant who makes written application, otherwise meets the requirements of Chapter ~~14~~ 22 (§ ~~54.1-1400~~ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia and also meets one of the following conditions:

1. Provides evidence of at least 12 years of geological work that includes the geological work as specified in ~~18VAC70-20-80~~ 18VAC-145-40-70; or

2. Provides evidence of an unexpired certificate of registration, certification or license to engage in the practice of geology issued on the basis of comparable requirements by a proper authority of a state, territory or possession of the United States or the District of Columbia.

Part III
Standards of Practice and Conduct

~~18VAC70-20-100.~~ 18VAC145-40-90. Disclosure.

A certified professional geologist:

1. Shall not submit any false statements or fail to disclose any facts requested concerning his or another's application for certification.

2. Shall not falsely or maliciously attempt to injure the reputation or business of another.

3. Shall not engage in any fraud, deceit, or misrepresentation in advertising, in soliciting or in providing professional services.

4. Shall not knowingly sign, stamp, or seal any plans, drawings, blueprints, surveys, reports, specifications, or other documents not prepared or reviewed and approved by the certificate holder.

5. Shall make full disclosure to all parties of:

a. Any transaction involving payments made to any person for the purpose of securing a contract, assignment, or engagement; or

b. Any monetary, financial or beneficial interest he may have in any contract or entity providing goods or services, other than his professional services, to a project or engagement.

6. Shall express an opinion only when it is founded on adequate knowledge of established facts at issue, on a background of technical competence in the subject matter, and on an honest conviction of the accuracy of the testimony when serving as an expert or technical witness before any court, commission, or other tribunal.

7. Shall provide adequate representation of his qualifications and scope of responsibilities for all previous experience claimed when negotiating with prospective clients.

~~18VAC70-20-105.~~ 18VAC145-40-100. Change of address or name.

Each certified professional geologist shall notify the board, in writing, of any change of address or name. This notification shall be sent to the board within 30 days after such change of address or name.

~~18VAC70-20-110.~~ 18VAC145-40-110. Compliance with other laws.

A certified professional geologist:

1. Shall comply with all federal, state, and local building, fire, safety, real estate, or mining codes, as well as any other laws, codes, ordinances, or regulations pertaining to the practice of geology.

2. Shall not violate any state or federal criminal statute, including fraud, misrepresentation, embezzlement, bribery, theft, forgery, or breach of fiduciary duty relating to his professional practice.

3. Shall immediately notify the client or employer and the appropriate regulatory agency if his professional judgment is overruled and not adhered to in circumstances of a serious threat to the public health, safety, or welfare. If appropriate remedial action is not taken within a reasonable amount of time after making the report, he shall notify the appropriate governmental authority of the specific nature of the public threat.

4. Shall give written notice to the board, and shall cooperate with the board and the department in furnishing any further information or assistance needed, if he knows or believes that another geologist/firm may be violating any of the provisions of Chapter ~~14~~ 22 (§ ~~54.1-1400~~ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia, or this chapter.

~~18VAC70-20-120.~~ 18VAC145-40-120. Conflicts of interest.

A certified professional geologist shall not:

1. Accept any work on any project or other professional engagement when a duty to a client or to the public would conflict with his personal interest or the interest of another client, unless immediate disclosure of all material facts of the conflict is made to each client related to the project or engagement.

2. Accept compensation for services related to the same project or professional engagement from more than one party without making prior full disclosure to all parties involved.

3. Offer, either directly or indirectly, any commission, political contribution, or other consideration in seeking work except to secure a salaried position through employment agencies.

~~18VAC70-20-130.~~ 18VAC145-40-130. Competence for assignments.

A certified professional geologist:

1. Shall exercise reasonable care when rendering professional services and shall apply the technical knowledge and skills ordinarily applied by practicing geologists.

2. Shall not accept any professional assignment or engagement that he is not competent to perform by way of education, technical knowledge, or experience. An assignment requiring education or experience outside his field of competence may be accepted provided:

a. His professional services are restricted to those phases of the project in which he is qualified; and

b. All other phases of the project are performed by qualified associates, consultants, or employees.

~~18VAC70-20-140.~~ 18VAC145-40-140. Grounds for suspension, revocation, or denial to renew or grant certification.

The board may suspend, revoke, or refuse to renew the certification of any geologist who, after a formal hearing as provided for in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), is found to have committed:

1. Fraud or deceit in obtaining or renewing certification (See subdivision 5 of § 54.1-111 of the Code of Virginia);

2. Any violation of Part III -- Standards of Practice and Conduct, other regulations of the board, or governing statutes of the board;

3. An act or acts of gross negligence, incompetence, or misconduct in the practice of geology as a certified professional geologist; or

4. Any conviction of a felony that in the opinion of the board would adversely affect the practice of geology.

~~18VAC70-20-150.~~ 18VAC145-40-150. Reissuance of certificate after revocation.

An individual whose certificate has been revoked in accordance with ~~18VAC70-20-140~~ 18VAC145-40-140 shall file a new application and obtain approval of the board to regain the certificate.

NOTICE: The forms administering this regulation are not being published; however, the forms are available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS ~~(18VAC70-20)~~ (18VAC145-40)

Certification Application, 28CERT (rev. 6/00).

Experience Log, 28EXP (rev. 1/05).

VA.R. Doc. No. R12-3263; Filed June 19, 2012, 1:11 p.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

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

Title of Regulation: **19VAC30-100. Regulations Governing Purchases of Handguns in Excess of One Within A 30-Day Period (repealing 19VAC30-100-10 through 19VAC30-100-110).**

Statutory Authority: § 18.2-308.2:2 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: LTC Robert Kemmler, Regulatory Coordinator, Department of State Police, Bureau of

Administrative and Support Services, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Summary:

Chapters 37 and 257 of the 2012 Acts of Assembly eliminated the prohibition on purchasing more than one handgun in a 30-day period. Therefore, this regulation is repealed.

VA.R. Doc. No. R12-3206; Filed June 29, 2012, 4:01 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

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

Title of Regulation: **22VAC40-90. Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (amending 22VAC40-90-10).**

Statutory Authority: § 63.2-217 and Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: Karen Cullen, Department of Social Services, Division of Licensing Programs, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, TTY (800) 828-1120, or email karen.cullen@dss.virginia.gov.

Summary:

This action amends the definition of barrier crime by adding a felony violation of a protective order as set out in § 16.1-253.2 of the Code of Virginia, abduction as set out in subsection A or B of 18.2-47, extortion by threat as set out in 18.2-59, and felony violation of a protective order as set out in 18.2-60.4 to align the regulation with the wording in the Code of Virginia.

Part I
Introduction

22VAC40-90-10. Definitions.

The following words and terms when used in conjunction with this chapter shall have the following meanings:

"Applicant for licensure" means the entity applying for approval as a licensed assisted living facility. An applicant may be an individual, association, partnership, limited liability company, corporation or public agency.

"Barrier crimes" means certain crimes that automatically bar individuals convicted of same from employment at a licensed assisted living facility or adult day care center and that automatically bar licensure of applicants convicted of same from assisted living facility licensure. These crimes, as specified by § 63.2-1719 of the Code of Virginia, are felony violations of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in subsection A or B of § 18.2-47; abduction for immoral purposes as set out in § 18.2-48; assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threats of death or bodily injury as set out in § 18.2-60; felony stalking as set out in § 18.2-60.3; felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361; incest as set out in § 18.2-366; taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1; abuse and neglect of children as set out in § 18.2-371.1; failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. Applicants for employment convicted of one misdemeanor barrier crime not involving abuse or neglect may be hired if five years have elapsed following the conviction.

"Central Criminal Records Exchange" means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request form is processed.

"Criminal history record request" means the Department of State Police form used to authorize the State Police to generate a criminal history record report on an individual.

"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The criminal record clearance provides conviction data only related to barrier crimes; the criminal history record discloses all known conviction data.

"Employee" means compensated personnel working at a facility regardless of role, service, age, function or duration of employment at the facility. Employee also includes those individuals hired through a contract to provide services for the facility.

"Facility" means an assisted living facility or adult day care center subject to licensure by the Department of Social Services.

"Sworn statement or affirmation" means a document to be completed, signed, and submitted for licensure or employment. The document discloses the licensure applicant's or employment applicant's criminal convictions and pending criminal charges that occurred within or outside the Commonwealth of Virginia. For applicants for licensure as an assisted living facility, the document also discloses whether or not the applicant has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth of Virginia. This is required as specified in §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

VA.R. Doc. No. R12-3172; Filed June 21, 2012, 3:27 p.m.

Final Regulation

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

Title of Regulation: **22VAC40-705. Child Protective Services (amending 22VAC40-705-40).**

Statutory Authority: §§ 63.2-217 and 63.2-1500 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: Rita Katzman, CPS Program Manager, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7554, FAX (804) 726-7499, TTY (800) 828-1120, or email rita.katzman@dss.virginia.gov.

Summary:

This regulatory action amends matters related to mandated reporting of child abuse and neglect. The amendments (i) require persons who make a report on behalf of another mandated reporter to provide feedback to the initial reporter; (ii) reduce the timeframe considered for failure to report suspicions of child abuse and neglect by mandated reporters from 72 to 24 hours; (iii) add a penalty of a Class 1 misdemeanor for failure to report cases of rape, sodomy, or object sexual penetration; (iv) add a stipulation that if a person has actual knowledge that a report has been made, he is not required to make the same report; (v) regarding infants exposed to controlled substances before birth, change the term "attending physician" to "health care provider," change the term "fetal alcohol syndrome" to "fetal alcohol spectrum disorder," and change the term "blood and urine tests" to "toxicology studies of the child"; and (vi) clarify language regarding the ability of the attending physician to designate hospital staff to make a report to Child Protective Services.

22VAC40-705-40. Complaints and reports of suspected child abuse and/or neglect.

A. Persons who are mandated to report are those individuals defined in § 63.2-1509 of the Code of Virginia.

1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity. No person shall be required to make a report pursuant to § 63.2-1509 of the Code of Virginia if the person has actual knowledge that the same matter has already been reported to the local department or the department's toll-free child abuse and neglect hotline.

2. Pursuant to § 63.2-1509 of the Code of Virginia, if information is received by a teacher, staff member, resident, intern, or nurse in the course of his professional services in a hospital, school, or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall then make such report forthwith. If the initial report of suspected abuse or neglect is made to the person in charge of the institution or department, or his designee, such person shall (i) notify the teacher, staff member, resident, intern, or nurse who made the initial report when the report of suspected child abuse or neglect is made to the local department or to the department's toll-free child abuse and neglect hotline; (ii) provide the name of the individual receiving the report; and (iii) forward any communication resulting from the report, including any information about any actions taken regarding the report, to the person who made the initial report.

~~2.~~ 3. Mandated reporters shall disclose all information that is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports that document the basis for the complaint and/or report.

~~3.~~ 4. A mandated reporter's failure to report ~~within 72~~ as soon as possible, but no longer than 24 hours ~~of the first suspicion~~ after having reason to suspect a reportable offense of child abuse or neglect shall result in a fine. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article 7 (§ 18.2-61 et seq.) of

Chapter 4 of Title 18.2 of the Code of Virginia, a person who knowingly and intentionally fails to make the report required pursuant to § 63.2-1509 of the Code of Virginia shall be guilty of a Class 1 misdemeanor.

~~4.~~ 5. Pursuant to § 63.2-1509 B of the Code of Virginia, ~~certain specified facts indicating that a newborn infant may have been exposed to controlled substances prior to birth or a positive drug toxicology of the mother indicating the presence of a controlled substance are sufficient to suspect that a child is abused or neglected. A diagnosis of fetal alcohol syndrome is also sufficient~~ a "reason to suspect that a child is abused or neglected" shall include (i) a finding made by a health care provider within six weeks of the birth of a child that the results of toxicology studies of the child indicate the presence of a controlled substance that was not prescribed for the mother by a physician; (ii) a finding made by a health care provider within six weeks of the birth of a child that the child was born dependent on a controlled substance that was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis made by a health care provider at any time following a child's birth that the child has an illness, disease, or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance that was not prescribed by a physician for the mother or the child; or (iv) a diagnosis made by a health care provider at any time following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report. Any report made pursuant to § 63.2-1509 A of the Code of Virginia constitutes a valid report of abuse or neglect and requires a child protective services investigation or family assessment, unless the mother sought treatment or counseling as required in this section and pursuant to § 63.2-1505 B of the Code of Virginia.

~~a. The attending physician may designate a hospital staff person to make the report to the local department on behalf of the attending physician. That hospital staff person may include a nurse or hospital social worker.~~

~~b.~~ a. Pursuant to § 63.2-1509 of the Code of Virginia, whenever a ~~physician~~ health care provider makes a finding pursuant to § 63.2-1509 A of the Code of Virginia, then the ~~physician~~ health care provider or his designee must make a report to child protective services immediately. Pursuant to § 63.2-1509 D of the Code of Virginia, a ~~physician~~ health care provider who fails to make a report pursuant to § 63.2-1509 A of the Code of Virginia is subject to a fine.

~~c.~~ b. When a report or complaint alleging abuse or neglect is made pursuant to § 63.2-1509 A of the Code of Virginia, then the local department must immediately assess the infant's circumstances and any threat to the infant's health and safety. Pursuant to 22VAC40-705-110 A, the local department must conduct an initial assessment.

~~d.~~ c. When a report or complaint alleging abuse or neglect is made pursuant to § 63.2-1509 A of the Code of Virginia, then the local department must immediately determine whether to petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

~~e.~~ d. Within five days of receipt of a report made pursuant to § 63.2-1509 A of the Code of Virginia, the local department shall invalidate the complaint if the following two conditions are met: (i) the mother of the infant sought substance abuse counseling or treatment during her pregnancy prior to the infant's birth and (ii) there is no evidence of child abuse and/or neglect by the mother after the infant's birth.

(1) The local department must notify the mother immediately upon receipt of a complaint made pursuant to § 63.2-1509 A of the Code of Virginia. This notification must include a statement informing the mother that, if the mother fails to present evidence within five days of receipt of the complaint that she sought substance abuse counseling/treatment during the pregnancy, the report will be accepted as valid and an investigation or family assessment initiated.

(2) If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a substantive effort to receive substance abuse treatment before the child's birth. If the mother made a substantive effort to receive treatment or counseling prior to the child's birth, but did not receive such services due to no fault of her own, then the local department should invalidate the complaint or report.

(3) If the mother sought or received substance abuse counseling or treatment, but there is evidence, other than exposure to a controlled substance, that the child may be abused or neglected, then the local department may initiate the investigation or family assessment.

~~f.~~ e. Substance abuse counseling or treatment includes, but is not limited to, education about the impact of alcohol, controlled substances and other drugs on the fetus and on the maternal relationship; education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs.

~~g.~~ f. The substance abuse counseling or treatment should attempt to serve the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing

children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

~~h.~~ g. The substance abuse counseling or treatment services must be provided by a professional. Professional substance abuse treatment or counseling may be provided by a certified substance abuse counselor or a licensed substance abuse treatment practitioner.

~~i.~~ h. Facts indicating that the infant may have been exposed to controlled substances prior to birth are not sufficient, in and of themselves, to render a founded disposition of abuse or neglect. The local department must establish, by a preponderance of the evidence, that the infant was abused or neglected according to the statutory and regulatory definitions of abuse and neglect.

~~j.~~ i. The local department may provide assistance to the mother in locating and receiving substance abuse counseling or treatment.

B. Persons who may report child abuse and/or neglect include any individual who suspects that a child is being abused and/or neglected pursuant to § 63.2-1510 of the Code of Virginia.

C. Complaints and reports of child abuse and/or neglect may be made anonymously. An anonymous complaint, standing alone, shall not meet the preponderance of evidence standard necessary to support a founded determination.

D. Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to § 63.2-1512 of the Code of Virginia.

E. When the identity of the reporter is known to the department or local department, these agencies shall make every effort to protect the reporter's identity. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously.

F. If a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to § 63.2-1514 of the Code of Virginia.

G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse and/or neglect and is convicted shall be guilty of a Class 1 misdemeanor for a first offense pursuant to § 63.2-1513 of the Code of Virginia.

1. A subsequent conviction results in a Class 6 felony.

2. Upon receipt of notification of such conviction, the department will retain a list of convicted reporters.

3. The subject of the records may have the records purged upon presentation of proof of such conviction.

H. To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to § 63.2-1510 of the Code of Virginia.

1. The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to ensure that a family assessment or an investigation is conducted.

2. A local department may ask another local department that is a local department of jurisdiction to assist in conducting the family assessment or investigation. If assistance is requested, the local department shall comply.

3. A local department may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.

4. If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The judge shall assign the report to a local department that is not the employer of the subject of the report pursuant to §§ 63.2-1509 and 63.2-1510 of the Code of Virginia. The judge may consult with the department in selecting a local department to respond.

VA.R. Doc. No. R12-3179; Filed June 21, 2012, 3:22 p.m.

Final Regulation

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

Title of Regulation: **22VAC40-740. Adult Protective Services (amending 22VAC40-740-10, 22VAC40-740-50).**

Statutory Authority: § 63.2-217 and Article 2 (§ 63.2-1603 et seq.) of Chapter16 of Title 63.2 of the Code of Virginia.

Effective Date: August 15, 2012.

Agency Contact: Paige McCleary, Program Consultant, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, TTY (800) 828-1120, or email paige.mccleary@dss.virginia.gov.

Summary:

This action (i) amends the definition of incapacitated person by changing the term "mental retardation" to "intellectual disability" and (ii) changes the name of the Department for the Aging to the Department for Aging and Rehabilitative Services.

22VAC40-740-10. Definitions.

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement.

"Adult" means any person in the Commonwealth who is abused, neglected, or exploited, or is at risk of being abused, neglected, or exploited; and is 18 years of age or older and incapacitated, or is 60 years of age and older.

"Adult protective services" means the receipt, investigation and disposition of complaints and reports of adult abuse, neglect, and exploitation of adults 18 years of age and over who are incapacitated and adults 60 years of age and over by the local department of social services. Adult protective services also include the provision of casework and care management by the local department in order to stabilize the situation or to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation. If appropriate and available, adult protective services may include the direct provision of services by the local department or arranging for home-based care, transportation, adult day services, meal service, legal proceedings, alternative placements and other activities to protect the adult and restore self-sufficiency to the extent possible.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of adult abuse, neglect or exploitation or whose involvement may help ensure the safety of the adult.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person, and where the context plainly indicates, includes a "limited conservator" or a "temporary conservator."

"Department" means the Virginia Department of Social Services.

"Director" means the director or his delegated representative of the department of social services of the city or county in which the adult resides or is found.

"Disposition" means the determination of whether or not adult abuse, neglect or exploitation has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage. This includes acquiring an adult's resources through the use of the adult's mental or physical incapacity, the disposition of the incapacitated adult's property by a second party to the advantage of the second party and to the detriment of the incapacitated adult, misuse of funds, acquiring an advantage through threats to withhold needed support or care unless certain conditions are met, or persuading an incapacitated adult to perform services including sexual acts to which the adult lacks the capacity to consent.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person and managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Guardian ad litem" means an attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested. On the hearing of the petition for appointment of a guardian or conservator, the guardian ad litem advocates for the adult who is the subject of the hearing, and his duties are usually concluded when the case is decided.

"Incapacitated person" means any adult who is impaired by reason of mental illness, ~~mental retardation~~ intellectual disability, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being. This definition is for the purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures.

"Involuntary protective services" means those services authorized by the court for an adult who has been determined to need protective services and who has been adjudicated incapacitated and lacking the capacity to consent to receive the needed protective services.

"Lacks capacity to consent" means a preliminary judgment of a local department of social services social worker that an adult is unable to consent to receive needed services for reasons that relate to emotional or psychiatric problems, ~~mental retardation~~ intellectual disability, developmental delay, or other reasons which impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary. The worker must make a preliminary judgment that the adult lacks capacity to consent before petitioning the court for authorization to provide protective services on an emergency basis pursuant to § 63.2-1609 of the Code of Virginia.

"Legally incapacitated" means that the person has been adjudicated incapacitated by a circuit court because of a mental or physical condition which renders him, either wholly or partially, incapable of taking care of himself or his estate.

"Legally incompetent" means a person who has been adjudicated incompetent by a circuit court because of a

mental condition which renders him incapable of taking care of his person or managing his estate.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia.

"Local department" means any local department of social services in the Commonwealth of Virginia.

"Mandated reporters" means those persons who are required to report pursuant to § 63.2-1606 of the Code of Virginia when such persons have reason to suspect that an adult is abused, neglected, or exploited or is at risk of adult abuse, neglect, or exploitation.

"Mental anguish" means a state of emotional pain or distress resulting from activity (verbal or behavioral) of a perpetrator. The intent of the activity is to threaten or intimidate, cause sorrow or fear, humiliate, change behavior or ridicule. There must be evidence that it is the perpetrator's activity that has caused the adult's feelings of pain or distress.

"Neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided such services as are necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is written or oral expression of consent by that adult. Neglect includes the failure of a caregiver or another responsible person to provide for basic needs to maintain the adult's physical and mental health and well-being, and it includes the adult's neglect of self. Neglect includes, but is not limited to:

1. The lack of clothing considered necessary to protect a person's health;

2. The lack of food necessary to prevent physical injury or to maintain life, including failure to receive appropriate food for adults with conditions requiring special diets;

3. Shelter that is not structurally safe; has rodents or other infestations which may result in serious health problems; or does not have a safe and accessible water supply, safe heat source or sewage disposal. Adequate shelter for an adult will depend on the impairments of an adult; however, the adult must be protected from the elements that would seriously endanger his health (e.g., rain, cold or heat) and could result in serious illness or debilitating conditions;

4. Inadequate supervision by a caregiver (paid or unpaid) who has been designated to provide the supervision necessary to protect the safety and well-being of an adult in his care;

5. The failure of persons who are responsible for caregiving to seek needed medical care or to follow medically prescribed treatment for an adult, or the adult has failed to obtain such care for himself. The needed medical care is believed to be of such a nature as to result in physical and/or mental injury or illness if it is not provided;

6. Medical neglect includes, but is not limited to, the withholding of medication or aids needed by the adult such as dentures, eye glasses, hearing aids, walker, etc. It also includes the unauthorized administration of prescription drugs, over- or under-medicating, and the administration of drugs for other than bona fide medical reasons, as determined by a licensed health care professional; and

7. Self-neglect by an adult who is not meeting his own basic needs due to mental and/or physical impairments. Basic needs refer to such things as food, clothing, shelter, health or medical care.

"Notification" means informing designated and appropriate individuals of the local department's action and the individual's rights.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence that is of greater weight or more convincing than the evidence offered in opposition.

"Report" means an allegation by any person that an adult is in need of protective services. The term "report" shall refer to both reports and complaints of abuse, neglect, and exploitation of adults. The report may be made orally or in writing to the local department or by calling the Adult Protective Services Hotline.

"Service plan" means a plan of action to address the service needs of an adult in order to protect the adult, to prevent future abuse, neglect or exploitation, and to preserve the autonomy of the adult whenever possible.

"Unreasonable confinement" means the use of restraints (physical or chemical), isolation, or any other means of confinement without medical orders, when there is no emergency and for reasons other than the adult's safety or well-being or the safety of others.

"Valid report" means the local department of social services has evaluated the information and allegations of the report and determined that the local department shall conduct an investigation because all of the following elements are present:

1. The alleged victim adult is 60 years of age or older or is 18 years of age or older and is incapacitated;

2. There is a specific adult with enough identifying information to locate the adult;

3. Circumstances allege abuse, neglect or exploitation or risk of abuse, neglect or exploitation; and

4. The local department receiving the report is a local department of jurisdiction as described in 22VAC40-740-21.

"Voluntary protective services" means those services provided to an adult who, after investigation by a local department, is determined to be in need of protective services and consents to receiving the services so as to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation.

22VAC40-740-50. Disclosure of adult protective services information.

A. This chapter describes the protection of confidential information including a description of when such information must be disclosed, when such disclosure of the information is at the discretion of the local department, what information may be disclosed, and the procedure for disclosing the information.

B. Department staff having legitimate interest shall have regular access to adult protective services records maintained by the local department.

C. The following agencies have licensing, regulatory and legal authority for administrative action or criminal investigations, and they have a legitimate interest in confidential information when such information is relevant and reasonably necessary for the fulfillment of their licensing, regulatory and legal responsibilities:

1. Department of Behavioral Health and Developmental Services;

2. Virginia Office for Protection and Advocacy;

3. Office of the Attorney General, including the Medicaid Fraud Control Program;

4. Department for ~~the~~ Aging and Rehabilitative Services;

5. Department of Health, including the Center for Quality Health Care Services and Consumer Protection and the Office of the Chief Medical Examiner;

6. Department of Medical Assistance Services;

7. Department of Health Professions;

8. Department for the Blind and Vision Impaired;

9. Department of Social Services, including the Division of Licensing Programs;

10. The Office of the State Long-Term Care Ombudsman and local ombudsman;

11. Law-enforcement agencies;

12. Medical examiners;

13. Adult fatality review teams;

14. Prosecutors; and

15. Any other entity deemed appropriate by the commissioner or local department director that demonstrates a legitimate interest.

D. The local department shall disclose all relevant information to representatives of the agencies identified in subsection C of this section except the identity of the person who reported the abuse, neglect or exploitation unless the reporter authorizes the disclosure of his identity or the disclosure is ordered by the court.

E. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory or legal authority for administrative action or criminal investigation.

F. Local departments may release information to the following persons when the local department has determined the person making the request has legitimate interest in accordance with § 63.2-104 of the Code of Virginia and the release of information is in the best interest of the adult:

1. Representatives of public and private agencies including community services boards, area agencies on aging and local health departments requesting disclosure when the agency has legitimate interest;

2. A physician who is treating an adult whom he reasonably suspects is abused, neglected or exploited;

3. The adult's legally appointed guardian or conservator;

4. A guardian ad litem who has been appointed for an adult who is the subject of an adult protective services report;

5. A family member who is responsible for the welfare of an adult who is the subject of an adult protective services report;

6. An attorney representing a local department in an adult protective services case;

7. The Social Security Administration; or

8. Any other entity that demonstrates to the commissioner or local department director that legitimate interest is evident.

G. Local departments are required to disclose information under the following circumstances:

1. When disclosure is ordered by a court;

2. When a person has made an adult protective services report and an investigation has been completed; or

3. When a request for access to information is made pursuant to the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia).

H. Any or all of the following specific information may be disclosed at the discretion of the local department to agencies or persons specified in subsection F of this section:

1. Name, address, age, race, and gender of the adult who is the subject of the request for information;

2. Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect, or exploitation;

3. Description of the incident or incidents of abuse, neglect, or exploitation;

4. Description of medical problems to the extent known;

5. Disposition of the adult protective services report; and

6. The protective service needs of the adult.

I. The identity of the person who reported the suspected abuse, neglect or exploitation shall be held confidential unless the reporter authorizes the disclosure of his identity or disclosure is ordered by the court.

J. Agencies or persons who receive confidential information pursuant to subsection G of this section shall provide the following assurances to the local department:

1. The purpose for which information is requested is related to the protective services goal in the service plan for the adult;

2. The information will be used only for the purpose for which it is made available; and

3. The information will be held confidential by the department or individual receiving the information except to the extent that disclosure is required by law.

K. Methods of obtaining assurances. Any one of the following methods may be used to obtain assurances required in subsection J of this section:

1. Agreements between local departments and other community service agencies that provide blanket assurances required in subsection J of this section for all adult protective services cases; or

2. State-level agreements that provide blanket assurances required in subsection C of this section for all adult protective services cases.

L. Notification that information has been disclosed. When information has been disclosed pursuant to this chapter, notice of the disclosure shall be given to the adult who is the subject of the information or to his legally appointed guardian. If the adult has given permission to release the information, further notification shall not be required.

VA.R. Doc. No. R12-3173; Filed June 21, 2012, 3:26 p.m.

Final Regulation

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

Title of Regulation: **22VAC40-745. Assessment in Assisted Living Facilities (amending 22VAC40-745-10, 22VAC40-745-90).**

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

Effective Date: August 15, 2012.

Agency Contact: Paige McCleary, Program Consultant, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, TTY (800) 828-1120, or email paige.mccleary@dss.virginia.gov.

Summary:

This action amends Code of Virginia and Virginia Administrative Code citations, updates the agency name of the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Department of Behavioral Health and Developmental Services, and amends the term "mental retardation" to "intellectual disability."

Part I
Definitions

22VAC40-745-10. Definitions.

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

"Activities of daily living (ADLs)" means bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Applicant" means an adult planning to reside in an assisted living facility.

"Assessment" means a standardized approach using common definitions to gather sufficient information about applicants to and residents of assisted living facilities to determine the need for appropriate level of care and services.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least moderate assistance with the activities of daily living. Moderate assistance means dependency in two or more of the activities of daily living. Included in this level of service are individuals who are dependent in behavior pattern (i.e., abusive, aggressive, disruptive).

"Assisted living facility (ALF)" means any public or private assisted living facility that is required to be licensed as an assisted living facility by the Department of Social Services under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, specifically, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of ~~Mental Health, Mental Retardation and Substance Abuse Services~~ Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the

handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility and meets the requirements of ~~22VAC40-71~~ 22VAC40-72.

"Auxiliary Grants Program" means a state and locally funded assistance program to supplement income of a Supplemental Security Income (SSI) recipient or adult who would be eligible for SSI except for excess income, who resides in an assisted living facility with an approved rate.

"Case management" means multiple functions designed to link individuals to appropriate services. Case management may include a variety of common components such as initial screening of need, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and follow-up.

"Case management agency" means a public human service agency which employs or contracts for case management.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Consultation" means the process of seeking and receiving information and guidance from appropriate human services agencies and other professionals when assessment data indicate certain social, physical and mental health conditions.

"Department" or "DSS" means the Virginia Department of Social Services.

"Dependent" means, for activities of daily living (ADLs) and instrumental activities of daily living (IADLs), the individual needs the assistance of another person or needs the assistance of another person and equipment or device to safely complete the activity. For medication administration, dependent means the individual needs to have medications administered or monitored by another person or professional staff. For behavior pattern, dependent means the person's behavior is aggressive, abusive, or disruptive.

"Discharge" means the movement of a resident out of the assisted living facility.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by not permitting entry into the facility until requirements for admission have been met.

"Facility" means an assisted living facility.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Instrumental activities of daily living (IADLs)" means meal preparation, housekeeping, laundry, and money management. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

"Medication administration" means the degree of assistance required to take medications and is a part of determining the need for appropriate level of care and services.

"Private pay" means that a resident of an assisted living facility is not eligible for benefits under the Auxiliary Grants Program.

"Public human services agency" means an agency established or authorized by the General Assembly under Chapters 2 and 3 (§§ 63.2-203 et seq. and 63.2-300 et seq.) of Title 63.2, ~~Chapter 7 (§ 2.2-700 et seq.) of Title 2.2~~ Chapter 14 (§ 51.5-116 et seq.) of Title 51.5, Chapters 1 and ~~10 (§§ 37.1-1 et seq. and 37.1-194 et seq.) of Title 37.1~~ 5 (§§ 37.2-100 et seq. and 37.2-500 et seq.) of Title 37.2, or Article 5 (§ 32.1-30 et seq.) of Chapter 1 of Title 32.1, ~~Chapter 1 (§ 51.5-1 et seq.) of Title 51.5, or §§ 53.1-21 and 53.1-60 of the Code of Virginia,~~ or hospitals operated by the state under Chapters 6.1 and 9 (§§ 23-50.4 et seq. and 23-62 et seq.) of Title 23 of the Code of Virginia and supported wholly or principally by public funds, including but not limited to funds provided expressly for the purposes of case management.

"Public pay" means that a resident of an assisted living facility is eligible for benefits under the Auxiliary Grants Program.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument. For private pay individuals, a qualified assessor is staff of the assisted

living facility trained in the completion of the uniform assessment instrument or an independent private physician.

"Reassessment" means an update of information at any time after the initial assessment. In addition to a periodic reassessment, a reassessment should be completed whenever there is a significant change in the resident's condition.

"Resident" means an individual who resides in an assisted living facility.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Minimal assistance means dependency in only one activity of daily living or dependency in one or more of the selected instrumental activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument. This definition includes independent living facilities that voluntarily become licensed.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

"Targeted case management" means the provision of ongoing case management services by an employee of a public human services agency contracting with the Department of Medical Assistance Services to an auxiliary grant resident of an assisted living facility who meets the criteria set forth in ~~Part IV (12VAC30-50-410 et seq.) of 12VAC30-50~~ 12VAC30-50-470.

"Total dependence" means the individual is entirely unable to participate in the performance of an activity of daily living.

"Uniform assessment instrument" means the department-designated assessment form. There is an alternate version of the uniform assessment instrument which may be used for private pay residents; social and financial information which is not relevant because of the resident's payment status is not included on this version.

"User's Manual: Virginia Uniform Assessment Instrument" means the department-designated handbook containing common definitions and procedures for completing the department-designated assessment form.

"Virginia Department of Medical Assistance Services (DMAS)" means the single state agency designated to administer the Medical Assistance Services Program in Virginia.

22VAC40-745-90. Actions to be taken upon completion of the uniform assessment instrument.

A. Public pay individuals.

1. Upon completion of the uniform assessment instrument for admission, a significant change in the resident's condition, or the annual reassessment, the case manager or a qualified assessor shall forward to the local department of social services financial eligibility worker in the appropriate agency of jurisdiction, in the format specified by the department, the effective date of admission or change in level of care. Qualified assessors who may perform the annual reassessment or a change in level of care for public pay individuals are employees of (i) local departments of social services; (ii) area agencies on aging; (iii) centers for independent living; (iv) community services boards; and (v) local departments of health, or an independent physician to complete the uniform assessment instrument.

2. The completed uniform assessment instrument, the referral to the financial eligibility worker, and other relevant data shall be maintained in the assisted living facility resident's record.

3. The annual reassessment shall be completed by the qualified assessor conducting the initial assessment. If the original assessor is neither willing nor able to complete the assessment and another assessor is not available, the local department of social services where the resident resides following placement in an assisted living facility shall be the assessor.

4. Clients of a community services board shall be assessed and reassessed by qualified assessors employed by the community services board.

5. The facility shall provide to the community services board or behavioral health authority notification of uniform assessment instruments that indicate observed behaviors or patterns of behavior indicative of mental illness, ~~mental retardation~~ intellectual disability, substance abuse, or behavioral disorders, pursuant to § 63.2-1805 B of the Code of Virginia.

B. For private pay residents, the assisted living facility shall ensure that assessments for all residents at admission and at subsequent intervals are completed as required in this chapter. The assisted living facility shall maintain in the resident's record the resident's uniform assessment instrument and other relevant data.

VA.R. Doc. No. R12-3174; Filed June 21, 2012, 3:24 p.m.

DEPARTMENT OF CONSERVATION AND RECREATION AND DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Loads for Middle Fork Holston River

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of an implementation plan (IP) for bacteria and aquatic life total maximum daily loads (TMDLs) for the Middle Fork Holston River beginning at the Wythe and Smyth County line downstream to Mock Mill and Neff in Washington County and Wolf Creek beginning south of Abingdon to the backwaters of South Holston Lake. Wolf Creek is impaired for bacteria and aquatic life. TMDLs were completed for these impaired watersheds in 2010 and 2009, respectively, and can be found on DEQ's website at: http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The first public meeting to initiate development of the IP for the bacteria and aquatic life TMDLs will be held on Tuesday, July 24, 2012, from 7 p.m. to 9 p.m. at the Virginia Department of Environmental Quality's Abingdon Office, 355 Deadmore Street, Abingdon, Virginia. At this meeting, the implementation plan process will be presented and the public will have the opportunity to ask questions. At the second hour of the public meeting attendees will be invited to participate in smaller group sessions to discuss the sources contributing to the local water quality impairments.

The 30-day public comment period for this meeting will end on August 23, 2012. A fact sheet on the development of the IP for the Middle Fork Holston River and Wolf Creek is available upon request. Questions or information requests should be addressed to Charlie Lunsford with the Virginia Department of Conservation and Recreation. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Charlie Lunsford, Department of Conservation and Recreation, email charles.lunsford@dcr.virginia.gov, telephone (804) 786-3199.

Total Maximum Daily Loads for North Fork Holston River (Hiltons Volunteer Fire Department)

Announcement of an effort to restore water quality in the North Fork Holston River and the following tributaries: Lick Creek, Beaver Creek, Laurel Creek, Locust Cove Creek, Robertson Branch, Turkey Run Creek, Logan Creek, Toole Creek, Tumbling Creek, Wolf Creek, Burmley Creek, Cove Creek, Abrams Creek, Little Moccasin Creek, Nordyke Creek, Smith Creek, Blue Springs Branch, Dowell Branch, Hilton Creek, Possum Creek, and Big Moccasin Creek in Bland, Smyth, Tazewell, Washington, and Scott Counties, Virginia.

Public meeting location: Hiltons Volunteer Fire Department on Route 614 in Hiltons, Virginia on July 17, 2012, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) are announcing the final study report to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Final public meeting on a study to restore water quality and first meeting to develop an implementation plan.

Description of study: DEQ has been working to identify sources of bacterial contamination and sources of pollutants affecting aquatic organisms. The mainstem of the North Fork Holston River in Bland, Smyth, Washington, and Scott Counties is impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Lick Creek, Beaver Creek, Locust Cove Creek, Robertson Branch, Turkey Run Creek, and Tumbling Creek in Smyth County, as well as Laurel Creek in Smyth, Bland, and Tazewell Counties are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Logan Creek, Toole Creek, Wolf Creek, Brumley Creek, Abrams Creek, Little Moccasin Creek, Nordyke Creek, and Smith Creek in Washington County, as well as Cove Creek and Big Moccasin Creek in Scott and Washington Counties, are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Blue Springs Branch, Dowell Branch, Hilton Creek, and Possum Creek in Scott County are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Lick Creek, Laurel Creek, and the North Fork Holston River from the Cove Creek confluence downstream to the Tennessee state line are impaired for failing to meet the aquatic life use (benthic impairment) based on violations of the general standard for aquatic organisms. Laurel Creek is also impaired for failure to meet the aquatic life use based on violations of the temperature water quality standard.

During the study, the sources of bacterial contamination and pollutants impairing the aquatic community have been identified and total maximum daily loads (TMDL) developed for the impaired waters. To restore water quality,

contamination levels must be reduced to the TMDL amount. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, July 17, 2011, to August 20, 2012. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contact below or on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx.

Contact for additional information: Martha Chapman, TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, FAX (276) 676-4899, or email martha.chapman@deq.virginia.gov.

Total Maximum Daily Loads for North Fork Holston River (Friends Community Church)

Announcement of an effort to restore water quality in the North Fork Holston River and the following tributaries: Lick Creek, Beaver Creek, Laurel Creek, Locust Cove Creek, Robertson Branch, Turkey Run Creek, Logan Creek, Toole Creek, Tumbling Creek, Wolf Creek, Burmley Creek, Cove Creek, Abrams Creek, Little Moccasin Creek, Nordyke Creek, Smith Creek, Blue Springs Branch, Dowell Branch, Hilton Creek, Possum Creek, and Big Moccasin Creek in Bland, Smyth, Tazewell, Washington, and Scott Counties, Virginia.

Public meeting location: Friends Community Church, 145 Palmer Avenue, Saltville, VA on July 19, 2012, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) are announcing the final study report to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Final public meeting on a study to restore water quality and first meeting to develop an implementation plan.

Description of study: DEQ has been working to identify sources of bacterial contamination and sources of pollutants affecting aquatic organisms. The mainstem of the North Fork Holston River in Bland, Smyth, Washington, and Scott Counties is impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Lick Creek, Beaver Creek, Locust Cove Creek, Robertson Branch, Turkey Run Creek, and Tumbling Creek in Smyth County, as well as Laurel Creek in Smyth, Bland, and Tazewell Counties, are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Logan Creek, Toole Creek, Wolf Creek, Brumley Creek, Abrams Creek, Little Moccasin Creek, Nordyke Creek, and Smith Creek in Washington County, as well as Cove Creek and Big Moccasin Creek in Scott and Washington Counties, are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Blue Springs Branch, Dowell Branch, Hilton Creek, and Possum Creek in Scott County are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violations of the E. coli standard. Lick Creek, Laurel Creek, and the North Fork Holston River from the Cove Creek confluence downstream to the Tennessee state line are impaired for failing to meet the aquatic life use (benthic impairment) based on violations of the general standard for aquatic organisms. Laurel Creek is also impaired for failure to meet the aquatic life use based on violations of the temperature water quality standard.

During the study, the sources of bacterial contamination and pollutants impairing the aquatic community will be identified and total maximum daily loads (TMDL) developed for the impaired waters. To restore water quality, contamination levels must be reduced to the TMDL amount. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, July 19, 2012, to August 20, 2012. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contact below or on the DEQ website at

http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx.

Contact for additional information: Martha Chapman, TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, FAX (276) 676-4899, or email martha.chapman@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

2012 Reimbursement Methodology Changes

Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Act (USC 1396a(a)(13)))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC30-70); Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80); and Methods and Standards for Establishing Payment Rates-Long Term Care (12VAC30-90). DMAS shall implement a number of changes in reimbursement methodology July 1, 2012, pursuant to Item 307 of the 2012 Appropriation Act.

Reimbursement Changes Affecting Hospitals (12VAC30-70)

Limit Inflation to 2.6% for Inpatient Hospitals (Including Long-Stay and Freestanding Psychiatric Hospitals)

12VAC30-70-50 is being amended to limit the inflation adjustment for long-stay hospitals to 2.6%. 12VAC30-70-351 is being amended to limit the inflation adjustment for inpatient hospital, including freestanding psychiatric hospital, operating rates to 2.6%. These changes are mandated by Item 307 LLL of the 2012 Appropriation Act, $14,721,558 GF; $11,767,125 NGF; $26,488,682 TF.

12VAC30-70-351 is also being amended to:

1) Limit the inflation adjustment for inpatient hospital disproportionate share hospital (DSH) payments to 2.6% for all hospitals. This change is mandated by Item 307 LLL of the 2012 Appropriation Act. $765,811 GF; $765,811 NGF; $1,531,622 TF.

2) Limit the inflation adjustment for graduate medical education (GME) payments to 2.6% for all hospitals. This change is mandated by Item 307 LLL of the 2012 Appropriation Act. $474,563 GF; $179,251 NGF; $653,814 TF.

12VAC30-80-96 is being amended to increase the reimbursement for early intervention targeted case management services by 10%. This change is mandated by Item 307 PPP of the 2012 Appropriation Act. $274,752 GF; $274,752 NGF; $549,504 TF.

12VAC30-80-180 is being amended to eliminate inflation adjustment for home health agencies for state fiscal year (SFY) 2013. This change is mandated by Item 307 GGG of the 2012 Appropriation Act. ($77,063) GF; ($77,063) NGF; ($154,126) TF.

12VAC30-80-200 is being amended to eliminate inflation adjustment for outpatient rehabilitation agencies for SFY 2013. This change is mandated by Item 307 GGG of the 2012 Appropriation Act. ($206,872) GF; ($206,872) NGF; ($413,744) TF.

Reimbursement Changes Affecting Nursing Facilities (12VAC30-90)

12VAC30-90-41 is being amended to eliminate rebasing in SFY 2013, limit the inflation adjustment for operating rates to 2.2%, and limit the inflation adjustment for ceilings to 3.2% for nursing facilities and specialized care facilities. This change is mandated by Item 307 MMM of the 2012 Appropriation Act. $11,529,215 GF; $11,529,215 NGF; $23,058,430 TF.

12VAC30-90-36 is being amended to reduce the nursing facility capital rental rate floor from 9.0 to 8.5%, which would have been restored to 9.0 from 8.5% effective July 1, 2012. This change is mandated by Item 307 UUU of the 2012 Appropriation Act. ($2,500,000) GF; ($2,500,000) NGF; ($5,000,000) TF.

This notice is intended to satisfy the requirements of 42 CFR § 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (http://www.townhall.virginia.gov). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Lessard and such comments are available for review at the same address.

Contact Information: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, TDD (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Campbell County

An enforcement action has been proposed for Campbell County for violations at the Campbell County Landfill. A proposed consent order describes a settlement to resolve

unpermitted discharge of fill material to a wetland. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from July 16, 2012, to August 15, 2012.

Proposed Consent Special Order for Town of Christiansburg

An enforcement action has been proposed for the Town of Christiansburg for violations at the Town of Christiansburg Wastewater Treatment Facility. The special order by consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from July 16, 2012, to August 15, 2012.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 201 N. 9th Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi.

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/cumultab.htm.

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.