

STATE WATER CONTROL BOARD **12/13/00 Amendments**
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT REGULATION
9 VAC 25-31-10 et seq.

9 VAC 25-31-10. Definitions.

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

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

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

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

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

"Approved program or approved State" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123 (1999).

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"Approved POTW Pretreatment Program or Program or POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII of this regulation and which has been approved by the Director or by the Administrator in accordance with 9 VAC 25-31-830.

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

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

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

"Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Virginia State Water Control Board or State Water Control Board.

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

"Class I sludge management facility" means any POTW identified under Part VII of this regulation as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I

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sludge management facility by the Regional Administrator, in conjunction with the Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

"Concentrated animal feeding operation" means an animal feeding operation which meets the criteria of this definition, or which the Board designates under 9 VAC 25-31-130.

An animal feeding operation is a concentrated animal feeding operation if either of the following criteria are met.

1. More than the numbers of animals specified in any of the following categories are confined:
 - a. 1,000 slaughter and feeder cattle,
 - b. 700 mature dairy cattle (whether milked or dry cows),
 - c. 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
 - d. 500 horses,
 - e. 10,000 sheep or lambs,
 - f. 55,000 turkeys,
 - g. 100,000 laying hens or broilers (if the facility has continuous overflow watering),
 - h. 30,000 laying hens or broilers (if the facility has a liquid manure system),
 - i. 5,000 ducks, or
 - j. 1,000 animal units; or
2. More than the following number and types of animals are confined:
 - a. 300 slaughter or feeder cattle,
 - b. 200 mature dairy cattle (whether milked or dry cows),
 - c. 750 swine each weighing over 25 kilograms (approximately 55 pounds),
 - d. 150 horses,
 - e. 3,000 sheep or lambs,
 - f. 16,500 turkeys,
 - g. 30,000 laying hens or broilers (if the facility has continuous overflow watering),
 - h. 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

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i. 1,500 ducks, or

j. 300 animal units; and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into surface waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.

The term animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

The term manmade means constructed by man and used for the purpose of transporting wastes.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria of this definition, or which the Board designates under 9 VAC 25-31-140.

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

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

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

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

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

a. Closed ponds which discharge only during periods of excess runoff; or

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

Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish; e.g., trout and salmon.

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish; e.g., respectively, catfish, sunfish and minnows.

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

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

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

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

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

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

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limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge" means, when used in Part VII of this regulation, Indirect Discharge as defined in this section.

"Discharge of a pollutant" means:

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

This definition includes additions of pollutants into surface waters from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person

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which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (DMR)" means the form supplied by the Department, or an equivalent form developed by the permittee and approved by the Board, for the reporting of self-monitoring results by permittees.

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

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

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

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

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

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

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of a new source and which will be used in its operation, if these facilities or equipment are of such value

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as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

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

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (1999) pursuant to Section 311 of CWA.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a VPDES permit (other than the VPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

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

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

"Indirect Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the CWA and the Law.

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

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

"Industrial User or User" means a source of Indirect Discharge.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from other sources, both:

1. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
2. Therefore is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

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

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the latest Decennial Census by the Bureau of Census (40 CFR Part 122 Appendix F (1999)); or

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2. Located in the counties listed in 40 CFR Part 122 Appendix H (1999), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
3. Owned or operated by a municipality other than those described in paragraph 1 or 2 of this definition and that are designated by the Board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 1 or 2 of this definition. In making this determination the Board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving waters; and
 - e. Other relevant factors; or
4. The Board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph 1, 2, or 3 of this definition.

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

"Major facility" means any VPDES facility or activity classified as such by the Regional Administrator in conjunction with the Board.

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"Major municipal separate storm sewer outfall (or major outfall)" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

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

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest Decennial Census by the Bureau of Census (40 CFR Part 122 Appendix G (1999)); or
2. Located in the counties listed in 40 CFR Part 122 Appendix I (1999), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
3. Owned or operated by a municipality other than those described in paragraph 1 or 2 of this definition and that are designated by the Board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph 1 or 2 of this definition. In making this determination the Board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph 1 of this section;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving waters; or
 - e. Other relevant factors; or

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4. The Board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs 1, 2, or 3 of this definition.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying storm water;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW).

"Municipal separate storm sewer system or MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems, or designated under 9 VAC 25-31-120 A 1.

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

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

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"National Pretreatment Standard, Pretreatment Standard, or Standard" means, when used in Part VII, any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the CWA, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 9 VAC 25-31-770.

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

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES permit for discharges at that site.

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

"New source" means, except when used in Part VII of this regulation, any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or
2. After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

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

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located; or
 - b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - c. The production of wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs 1 b, or 1 c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.
3. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
 - a. Begun, or caused to begin as part of a continuous onsite construction program:
 - (1) Any placement, assembly, or installation of facilities or equipment; or
 - (2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

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"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

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

"Owner" means the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Law.

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

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

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

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

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

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

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

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

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII. Appropriate pretreatment technology includes control equipment, such

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as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII.

"Pretreatment requirements" means any requirements arising under Part VII of this regulation including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board. Pretreatment requirements does not include the requirements of a National Pretreatment Standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A (1999).

"Privately owned treatment works" means any device or system which is:

1. Used to treat wastes from any facility whose operator is not the operator of the treatment works; and
2. Not a POTW.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

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

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~~"Publicly owned treatment works (POTW)" means, except when used in Part VII of this regulation, any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.~~

"Publicly Owned Treatment Works (POTW)" means, ~~when used in Part VII of this regulation,~~ a treatment works as defined by Section 212 of the CWA, which is owned by a state or municipality (as defined by Section 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the CWA, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

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

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

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

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

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

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

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

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

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

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

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

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

"Significant Industrial User" means, except as provided in paragraph 3 of this definition:

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1. All industrial users subject to Categorical Pretreatment Standards under 9 VAC 25-31-780 and incorporated by reference in 9 VAC 25-31-30; and
2. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority, as defined in 9 VAC 25-31-840 A, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
3. Upon a finding that an industrial user meeting the criteria in paragraph 2 of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9 VAC 25-31-730 et seq.) of this regulation, determine that such industrial user is not a significant industrial user.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural

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runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA Section 404 permit.

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

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

"Small municipal separate storm sewer system or Small MS4" means all separate storm sewers that are: (i) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to surface waters; and (ii) Not defined as "large" or "medium" municipal separate storm sewer systems, or designated under 9 VAC 25-31-120 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

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

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"State" means the Commonwealth of Virginia.

"State/EPA Agreement" means an agreement between the Regional Administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Law.

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

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in paragraphs 1 - 11 of this definition) include those

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facilities designated under the provisions of 9 VAC 25-31-120 paragraph A 1 e. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (except facilities with toxic pollutant effluent standards which are exempted under category 11;
2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 344I, 373;
3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(1) (1999) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);
4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;
5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;
6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

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

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221 - 25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations.

Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs 1 - 7 or 9 - 11 of this definition are associated with industrial activity;

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

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

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

"Storm water discharge associated with small construction activity" means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Board may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the

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pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Board that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by either the Board or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Submission" means:

1. A request by a POTW for approval of a Pretreatment Program to the Regional Administrator or the Director;
2. A request by POTW to the Regional Administrator or the Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or
3. A request to the EPA by the Director for approval of the Virginia pretreatment program.

"Surface Waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

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- c. Which are used or could be used for industrial purposes by industries in interstate commerce;
- 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;
- 6. The territorial sea; and
- 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1

through 6 of this definition.

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

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (1999).

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

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

"Treatment works" means any devices and systems used for the storage, treatment, recycling and/or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such

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treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

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

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runoff or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

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

"Variance" means any mechanism or provision under Section 301 or 316 of CWA or under 40 CFR Part 125 (1999), or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

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"Virginia Pollutant Discharge Elimination System (VPDES) Permit" means a document issued by the Board, pursuant to this regulation, authorizing, under prescribed conditions the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"VPDES Application (Application)" means the standard form(s), including any additions, revisions or modifications to the forms, approved by the Administrator and the Board for applying for a VPDES permit.

"Wastewater" means, when used in Part VII of this regulation, liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

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

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

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

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

9 VAC 25-31-30. Federal Effluent Guidelines.

A. The following Federal Regulations are hereby incorporated by reference:

Aluminum Forming 40 CFR Part 467 (1999)

Asbestos Manufacturing 40 CFR Part 427 (1999)

Battery Manufacturing 40 CFR Part 461 (1999)

~~Builders' Paper and Board Mills 40 CFR Part 431 (1999)~~

Canned and Preserved Fruits and Vegetables 40 CFR Part 407 (1999)

Canned and Preserved Seafood 40 CFR Part 408 (1999)

Carbon Black Manufacturing 40 CFR Part 458 (1999)

Cement Manufacturing 40 CFR Part 411 (1999)

Coal Mining 40 CFR Part 434 (1999)

Coil Coating 40 CFR Part 465 (1999)

Copper Forming 40 CFR Part 468 (1999)

Dairy Products 40 CFR Part 405 (1999)

Electrical and Electronic Components 40 CFR Part 469 (1999)

Electroplating 40 CFR Part 413 (1999)

Explosives Manufacturing 40 CFR Part 457 (1999)

Feedlots 40 CFR Part 412 (1999)

Ferroalloy Manufacturing 40 CFR Part 424 (1999)

Fertilizer Manufacturing 40 CFR Part 418 (1999)

Glass Manufacturing 40 CFR Part 426 (1999)

Grain Mills 40 CFR Part 406 (1999)

Gum and Wood Chemicals Manufacturing 40 CFR Part 454 (1999)

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Hospitals 40 CFR Part 460 (1999)

Ink Formulating 40 CFR Part 447 (1999)

Inorganic Chemicals Manufacturing 40 CFR Part 415 (1999)

Iron and Steel Manufacturing 40 CFR Part 420 (1999)

Landfills 40 CFR Part 445 (2000)

Leather Tanning and Finishing 40 CFR Part 425 (1999)

Meat Products 40 CFR Part 432 (1999)

Metal Finishing 40 CFR Part 433 (1999)

Metal Molding and Casting 40 CFR Part 464 (1999)

Mineral Mining and Processing 40 CFR Part 436(1999)

Nonferrous Metals 40 CFR Part 421 (1999)

Nonferrous Metal Forming 40 CFR Part 471 (1999)

Oil and Gas Extraction 40 CFR Part 435 (1999)

Ore Mining and Dressing 40 CFR Part 440 (1999)

Organic Chemicals, Plastics and Synthetic Fibers 40 CFR Part 414 (1999)

Paint Formulating 40 CFR Part 446 (1999)

Paving and Roofing Materials 40 CFR Part 443 (1999)

Pesticide Chemicals 40 CFR Part 455 (1999)

Petroleum Refining 40 CFR Part 419 (1999)

Pharmaceutical Manufacturing 40 CFR Part 439 (1999)

Phosphate Manufacturing 40 CFR Part 422 (1999)

Photographic Processing 40 CFR Part 459 (1999)

Plastics Molding and Forming 40 CFR Part 463 (1999)

Porcelain Enameling 40 CFR Part 466 (1999)

Pulp, Paper and Paperboard 40 CFR Part 430 (1999)

Rubber Processing 40 CFR Part 428 (1999)

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Secondary Treatment 40 CFR Part 133 (1999)

Soaps and Detergents 40 CFR Part 417 (1999)

Steam Electric Power Generation 40 CFR Part 423 (1999)

Sugar Processing 40 CFR Part 409 (1999)

Textile Mills 40 CFR Part 410 (1999)

Timber Products 40 CFR Part 429 (1999)

Toxic Pollutant Effluent Standards 40 CFR Part 129 (1999)

Waste Combustors 40 CFR Part 444 (2000)

B. The Director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new National Standard. Upon identifying any such federal change or adoption, the Director shall forthwith initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by Virginia Code § 9-6.14:4.1C4(c) or a notice of a public hearing pursuant to § 9-6.14:7.1C.

9 VAC 25-31-50. Prohibitions.

A. Except in compliance with a VPDES permit, or another permit issued by the Board, it shall be unlawful for any person to:

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

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B. Any person required to obtain a permit pursuant to this regulation, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of 9 VAC 25-31-50 A; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of 9 VAC 25-31-50 A shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of discovery of the discharge.

1. The written report shall contain:

- a. A description of the nature and location of the discharge;
- b. The cause of the discharge;
- c. The date on which the discharge occurred;
- d. The length of time that the discharge continued;
- e. The volume of the discharge;
- f. If the discharge is continuing, how long it is expected to continue;
- g. If the discharge is continuing, what the expected total volume of the discharge will be; and
- h. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or

any future discharges not authorized by the permit.

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

C. No permit may be issued:

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

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

3. When the Regional Administrator has objected to issuance of the permit;

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4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;
6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
7. For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of CWA;
8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
 - a. Before the promulgation of guidelines under Section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Board determines permit issuance to be in the public interest; or
 - b. After promulgation of guidelines under Section 403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.
9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the Law and Sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the Department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:
 - a. There are sufficient remaining pollutant load allocations to allow for the discharge; and
 - b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Board may waive the submission of information by the new source or new discharger required by 9 VAC 25-31-50 C 9 if the Board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the permit under 9 VAC 25-31-280.

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9 VAC 25-31-100. Application for a permit.

A. Duty to apply.

Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this regulation, or a user of a privately owned treatment works unless the Board requires otherwise, shall submit a complete application to the Department in accordance with this section.

B. Who applies.

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

C. Time to apply.

1. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Storm water discharges from construction activities included in category 10 of the definition of storm water associated with industrial activity and storm water discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9 VAC 25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9 VAC 25-31-120 F.

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2. All TWTDS whose sewage sludge use or disposal practices are regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 must submit permit applications according to the applicable schedule in paragraphs C 2 a or b of this section.

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

b. Any other TWTDS not addressed under paragraph C 2 a of this section must submit the information listed in paragraphs C 2 b (1) through (5) of this section to the Department within 1 year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using a form provided by the Department. The Board will determine when such TWTDS must submit a full permit application.

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

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

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of paragraph 9 VAC 25-31-100 P 8 d of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

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

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

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

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

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D. Duty to reapply.

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

E. Completeness.

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

2. Pursuant to § 62.1-44.15:3 of the Code of Virginia, no application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, fifty or more residences shall be considered complete unless the applicant has provided the Department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

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

4. A permit application shall not be considered complete if the Board has waived application requirements under paragraphs J or P of this section and EPA has disapproved the waiver application. If a waiver request has been

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submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

F. Information requirements.

All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the Department, using the application form provided by the Department (additional information required of applicants is set forth in paragraphs G through K of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit.
2. Name, mailing address, and location of the facility for which the application is submitted.
3. Up to four SIC codes which best reflect the principal products or services provided by the facility.
4. The operator's name, address, telephone number, ownership status, and status as federal, state, private,

public, or other entity.

5. Whether the facility is located on Indian lands.
6. A listing of all permits or construction approvals received or applied for under any of the following

programs:

- a. Hazardous Waste Management program under RCRA;
- b. UIC program under SDWA;
- c. VPDES program under CWA and the Law;
- d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- e. Nonattainment program under the Clean Air Act;
- f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
- g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
- h. Dredge or fill permits under Section 404 of CWA; and
- i. Other relevant environmental permits, including state permits.

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

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

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9 VAC 25-31-100 H, shall provide the following information to the Department, using application forms provided by the Department.

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

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

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

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4. If any of the discharges described in paragraph G 3 of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water runoff, spillage or leaks).

5. If an effluent guideline promulgated under Section 304 of CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.

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

7. a. Information on the discharge of pollutants specified in this paragraph (except information on storm water discharges which is to be provided as specified in 9 VAC 25-31-120.) When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (1999). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs G 7 ee and ef of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed

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50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under 9 VAC 25-31-120 D may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9 VAC 25-31-120 C 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9 VAC 25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (1999), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

a_c. (4) Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical Oxygen Demand (BOD 5)

Chemical Oxygen Demand

Total Organic Carbon

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Total Suspended Solids

Ammonia (as N)

Temperature (both winter and summer)

pH

d. ~~(2)~~ The Board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph G 7 ~~a-(1)~~c of this section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

be. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (1999)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (1999) for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph G 8 of this section. Table II of 40 CFR Part 122 Appendix D (1999) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (1999) (the toxic metals, cyanide, and total phenols).

ef. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (1995) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

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(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (1999) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph G 7 ~~b~~e of this section, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph G 8 of this section is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (1999) (the organic toxic pollutants).

~~d~~g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (1999) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

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

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

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

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraph G 7 ~~b~~e (1) or G 7 ~~e~~f (1) of this section to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (1999) (the organic toxic pollutants):

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

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

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

10. [Reserved]

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant's discharges or on a receiving water in relation to a discharge.

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

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

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only non-process wastewater.

Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Department using application forms provided by the Department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;
2. Date of expected commencement of discharge;

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

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the Board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (1999). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

- (1) Biochemical Oxygen Demand (BOD 5).
- (2) Total Suspended Solids (TSS).
- (3) Fecal Coliform (if believed present or if sanitary waste is or will be discharged).
- (4) Total Residual Chlorine (if chlorine is used).
- (5) Oil and Grease.
- (6) Chemical Oxygen Demand (COD) (if non-contact cooling water is or will be discharged).
- (7) Total Organic Carbon (TOC) (if non-contact cooling water is or will be discharged).
- (8) Ammonia (as N).
- (9) Discharge Flow.
- (10) pH.
- (11) Temperature (Winter and Summer).

b. The Board may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph H 4 a of this section if the applicant submits a request for such a waiver before or with his application which

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demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

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

d. The requirements of paragraphs H 4 a and H 4 c of this section that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water runoff, leaks, or spills);

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

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9 VAC 25-31-230 G;

8. Signature of certifying official under 9 VAC 25-31-110; and

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

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the Department, using the application form provided by the Department:

1. For concentrated animal feeding operations:

a. The type and number of animals in open confinement and housed under roof;

b. The number of acres used for confinement feeding; and

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- c. The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor; and
- 2. For concentrated aquatic animal production facilities:
 - a. The maximum daily and average monthly flow from each outfall;
 - b. The number of ponds, raceways, and similar structures;
 - c. The name of the receiving water and the source of intake water;
 - d. For each species of aquatic animals, the total yearly and maximum harvestable weight;
 - e. The calendar month of maximum feeding and the total mass of food fed during that month; and
 - f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage.

Unless otherwise indicated, all POTWs and other dischargers designated by the Board must provide, at a minimum, the information in this paragraph to the Department, using an application form provided by the Department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. The Board may waive any requirement of this paragraph if it has access to substantially identical information. The Board may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the Board's justification for the waiver. A Regional Administrator's disapproval of the Board's proposed waiver does not constitute final Agency action, but does provide notice to the Board and permit applicant(s) that EPA may object to any Board-issued permit issued in the absence of the required information.

- 1. All applicants must provide the following information:
 - a. Name, mailing address, and location of the facility for which the application is submitted;
 - b. Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;
 - c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

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

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

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

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

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS)

preconstruction approval under the Clean Air Act;

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

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

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

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

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

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous 3 years;

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

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

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- (1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);
- (2) For wastewater discharged to surface impoundments:
 - (a) The location of each surface impoundment;
 - (b) The average daily volume discharged to each surface impoundment; and
 - (c) Whether the discharge is continuous or intermittent;
- (3) For wastewater applied to the land:
 - (a) The location of each land application site;
 - (b) The size of each land application site, in acres;
 - (c) The average daily volume applied to each land application site, in gallons per day; and
 - (d) Whether land application is continuous or intermittent;
- (4) For effluent sent to another facility for treatment prior to discharge:
 - (a) The means by which the effluent is transported;
 - (b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;
 - (c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and
 - (d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and
- (5) For wastewater disposed of in a manner not included in paragraphs J 1 h (1) through (4) of this section (e.g., underground percolation, underground injection):
 - (a) A description of the disposal method, including the location and size of each disposal site, if applicable;
 - (b) The annual average daily volume disposed of by this method, in gallons per day; and

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

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

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

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

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant.

Include outfalls from bypass piping, if applicable;

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

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

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

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

c. Process flow diagram or schematic.

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

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

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- (2) A narrative description of each required improvement;
- (3) Scheduled or actual dates of completion for the following:
 - (a) Commencement of construction;
 - (b) Completion of construction;
 - (c) Commencement of discharge; and
 - (d) Attainment of operational level;
- (4) A description of permits and clearances concerning other Federal and/or State

requirements;

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

- a. The following information about each outfall:
 - (1) Outfall number;
 - (2) State, county, and city or town in which outfall is located;
 - (3) Latitude and longitude, to the nearest second;
 - (4) Distance from shore and depth below surface;
 - (5) Average daily flow rate, in million gallons per day;
 - (6) The following information for each outfall with a seasonal or periodic discharge:
 - (a) Number of times per year the discharge occurs;
 - (b) Duration of each discharge;
 - (c) Flow of each discharge; and
 - (d) Months in which discharge occurs; and
 - (7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of

diffuser used;

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

- (1) Name of receiving water;

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- (2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;
 - (3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and
 - (4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);
- c. The following information describing the treatment provided for discharges from each outfall to surface waters:
- (1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
 - (a) Design biochemical oxygen demand (BOD5 or CBOD5) removal (percent);
 - (b) Design suspended solids (SS) removal (percent); and, where applicable,
 - (c) Design phosphorus (P) removal (percent);
 - (d) Design nitrogen (N) removal (percent); and
 - (e) Any other removals that an advanced treatment system is designed to achieve.
 - (2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination);
4. Effluent monitoring for specific parameters.
- a. As provided in paragraphs J 4 b through j of this section, all applicants must submit to the Department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The Board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone;
 - b. All applicants must sample and analyze for the following pollutants:

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- (1) Biochemical oxygen demand (BOD-5 or CBOD-5);
- (2) Fecal coliform;
- (3) Design Flow Rate;
- (4) pH;
- (5) Temperature; and
- (6) Total suspended solids

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

- (1) Ammonia (as N)
- (2) Chlorine (total residual, TRC)
- (3) Dissolved oxygen
- (4) Nitrate/Nitrite
- (5) Kjeldahl nitrogen
- (6) Oil and grease
- (7) Phosphorus
- (8) Total dissolved solids

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

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the Board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (1999), and for any other pollutants for which the Board or EPA have established water quality standards applicable to the receiving waters.

e. The Board may require sampling for additional pollutants, as appropriate, on a case-by-case basis;

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f. Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The Board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in paragraphs J 4 b through e of this section that is collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR part 136 (1999) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

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

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

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

(3) The analytical method used; and

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

j. Unless otherwise required by the Board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

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a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

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

- (1) All POTWs with design flow rates greater than or equal to one million gallons per day;
- (2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;
- (3) Other POTWs, as required by the Board, based on consideration of the following factors:
 - (a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);
 - (b) The ratio of effluent flow to receiving stream flow;
 - (c) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;
 - (d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or
 - (e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the Board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the Board may allow applicants to submit whole effluent toxicity data

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for only one outfall on a case-by-case basis. The Board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to paragraph J 5 b of this section must provide:

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

(2) Results from four tests performed at least annually in the four and one half year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the Board.

e. Applicants must conduct tests with multiple species (no less than two species; e.g., fish, invertebrate, plant), and test for acute and chronic toxicity, depending on the range of receiving water dilution. All applicants must conduct acute testing and applicants must conduct chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

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

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

h. Whole effluent toxicity testing conducted pursuant to paragraph J 5 b of this section must be conducted using methods approved under 40 CFR part 136 (1999), as directed by the Board.

i. For whole effluent toxicity data submitted to the Department within four and one-half years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to paragraph J 5 b of this section must provide any information on the cause of toxicity and written details of any toxicity reduction

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evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

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

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs)

discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as

defined at 9 VAC 25-31-10, that discharges to the POTW:

(1) Name and mailing address;

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

discharge;

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

SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount

attributable to process flow and non-process flow;

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

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

category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference)

have been attributed to the SIU in the past four and one-half years.

c. The information required in paragraphs J 6 a and b of this section may be waived by the

Board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain

information substantially identical to that required in paragraphs J 6 and b of this section.

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

(2) A pretreatment program;

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites.

POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response,

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

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (1999), the applicant must report the following:

- (1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and
- (2) The hazardous waste number and amount received annually of each hazardous waste;

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

- (1) The identity and description of the site or facility at which the wastewater originates;
- (2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (1999); if known; and
- (3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW;

c. Applicants are exempt from the requirements of paragraph J 7 b of this section if they receive no more than fifteen kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR Parts 261.30(d) and 261.33(e) (1999).

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

a. The following information regarding the combined sewer system:

- (1) A map indicating the location of the following:
 - (a) All CSO discharge points;

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- (b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and
 - (c) Waters supporting threatened and endangered species potentially affected by CSOs; and
- (2) A diagram of the combined sewer collection system that includes the following information:
- (a) The location of major sewer trunk lines, both combined and separate sanitary;
 - (b) The locations of points where separate sanitary sewers feed into the combined sewer system;
 - (c) In-line and off-line storage structures;
 - (d) The locations of flow-regulating devices; and
 - (e) The locations of pump stations;
- b. The following information for each CSO discharge point covered by the permit application:
- (1) The following information on each outfall:
 - (a) Outfall number;
 - (b) State, county, and city or town in which outfall is located;
 - (c) Latitude and longitude, to the nearest second;
 - (d) Distance from shore and depth below surface;
 - (e) Whether the applicant monitored any of the following in the past year for this CSO: (i) Rainfall; (ii) CSO flow volume; (iii) CSO pollutant concentrations; (iv) Receiving water quality; (v) CSO frequency; and
 - (f) The number of storm events monitored in the past year;
 - (2) The following information about CSO overflows from each outfall:
 - (a) The number of events in the past year;

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- (b) The average duration per event, if available;
- (c) The average volume per CSO event, if available; and
- (d) The minimum rainfall that caused a CSO event, if available, in the last

year;

- (3) The following information about receiving waters:

- (a) Name of receiving water;
- (b) Name of watershed/stream system and the United States Soil

Conservation Service watershed (14-digit) code (if known); and

- (c) Name of State Management/River Basin and the United States

Geological Survey hydrologic cataloging unit (8- digit) code (if known); and

- (4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable State water quality standard);

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility;

10. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110; and

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board.

K. Application requirements for new sources and new discharges.

New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of paragraph H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9 VAC 25-31-120 C 1 and this section (except as provided by 9 VAC 25-31-120 C 1 b) shall provide the following information to the Department, using the application forms provided by the Department:

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1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;
2. The expected date of commencement of discharge;
3.
 - a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;
 - b. A line drawing of the water flow through the facility with a water balance as described in paragraph G 2;
 - c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks); and
4. If a new source performance standard promulgated under Section 306 of CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;
5. The requirements in paragraphs H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.
 - a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The Board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

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- (1) Biochemical Oxygen Demand (BOD).
- (2) Chemical Oxygen Demand (COD).
- (3) Total Organic Carbon (TOC).
- (4) Total Suspended Solids (TSS).
- (5) Flow.
- (6) Ammonia (as N).
- (7) Temperature (winter and summer).
- (8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (1999) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (1999) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (1999) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

- (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS ±93 - 76 - 5);
- (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS ±93 - 72 - 1);

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- (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS ±136 - 25 - 4);
- (4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell) (CAS ±299 - 84 - 3);
- (5) 2,4,5-trichlorophenol (TCP) (CAS ±95 - 95 - 4); or
- (6) Hexachlorophene (HCP) (CAS ±70 - 30 - 4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (1999) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in paragraph G of this section. However, the applicant need not complete those portions of paragraph G requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9 VAC 25-31-110; and

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

L. Variance requests by non-POTWs.

A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

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(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA Section 301(b)(2)(F) pollutants (commonly called non-conventional pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to Section 301(g) of the CWA (provided however that a 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by Section 301(b)(2)(F)) and any other pollutant which the Administrator lists under Section 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the Regional Administrator, as well as to the Department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a Section 301(c) or Section 301(g) modification or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (1999) have been met. Notwithstanding this provision, the complete application for a request under Section 301(g) shall

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be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with paragraph L 2 a (2) of this section and need not be preceded by an initial request under paragraph L 2 a (1) of this section.

3. A modification under CWA Section 302(b)(2) of requirements under CWA Section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the Department.

M. Variance requests by POTWs.

A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under CWA Section 301(h) of requirements of CWA Section 301(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (1999).

2. A modification under CWA Section 302(b)(2) of the requirements under Section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in paragraphs L and M of this section, the Board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the Board may require the applicant as a condition of consideration of any potential variance

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request to submit a request explaining how the requirements of 40 CFR Part 125 (1999) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under paragraph L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the Board. Extensions shall be no more than 6 months in duration.

O. Recordkeeping.

Except for information required by paragraph C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI of this regulation), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

P. Sewage Sludge Management.

All TWTDS subject to 9 VAC 25-31-100 C 2 a must provide the information in this paragraph to the Department, using an application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. The Board may waive any requirement of this paragraph if it has access to substantially identical information. The Board may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the Board's justification for the waiver. A Regional Administrator's disapproval of the Board's proposed waiver does not constitute final Agency action, but does provide notice to the Board and the permit applicant that EPA may object to any Board-issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

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- c. The design flow rate (in million gallons per day);
- d. The total population served;
- e. The TWTDS's status as Federal, State, private, public, or other entity;
- f. The name, mailing address, and telephone number of the applicant; and
- g. Indication whether the applicant is the owner, operator, or both;

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other Federal, State, and local permits or construction approvals received or applied for under any of the following programs:

- a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
- b. UIC program under the Safe Drinking Water Act (SDWA);
- c. NPDES program under the Clean Water Act (CWA);
- d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- e. Nonattainment program under the Clean Air Act;
- f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
- g. Dredge or fill permits under section 404 of CWA;
- h. Other relevant environmental permits, including State or local permits;

3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country;

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

- a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
- b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant;

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5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction;

6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 9 VAC 25-31-420 et seq. for the applicant's use or disposal practices on the date of permit application.

a. Board may require sampling for additional pollutants, as appropriate, on a case-by-case basis;

b. Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application;

c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9 VAC 25-31-490 unless an alternative has been specified in an existing sewage sludge permit;

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

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(2) The analytical method used; and

(3) The method detection level.

7. If the applicant is a person who prepares sewage sludge, as defined at 9 VAC 25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility;

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b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

- (1) The name, mailing address, and location of the other facility;
- (2) The total dry metric tons per 365-day period received from the other facility; and
- (3) A description of any treatment processes occurring at the other facility, including

blending activities and treatment to reduce pathogens or vector attraction characteristics;

c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9 VAC 25-31-710 A or the Class B pathogen reduction requirements in 9 VAC 25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge;

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-3-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land;

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to paragraph P 7 d of this section, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is sold or given away in a bag or other container for application to the land; and

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(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away;

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined at 9 VAC 25-31-500, and the sewage sludge is not subject to paragraph 9 VAC 25-31-100 P 7 d, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9 VAC 25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge;

8. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to paragraphs 9 VAC 25-31-100 P 7 d, e or f, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land;

b. If any land application sites are located in States other than the State where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the State(s) where the land application sites are located;

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

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- (3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;
- (4) The name, mailing address, and telephone number of the site owner, if different from the applicant;
- (5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;
- (6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 9 VAC 25-31-500;
- (7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;
- (8) Whether either of the vector attraction reduction options of 9 VAC 25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and
- (9) Other information that describes how the site will be managed, as specified by the Board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site:

- (1) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to 9 VAC 25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9 VAC 25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;
- (2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in paragraph 9 VAC 25-31-100 P 8 d (1), bulk sewage sludge subject to cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993;

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e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

- (1) Describes the geographical area covered by the plan;
- (2) Identifies the site selection criteria;
- (3) Describes how the site(s) will be managed;
- (4) Provides for advance notice to the Board of specific land application sites and

reasonable time for the Board to object prior to land application of the sewage sludge; and

(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site and notice to landowners and occupants adjoining the proposed land application site.

9. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period;

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site;

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

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- (3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;
- (4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;
- (5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;
- (6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;
- (7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any Federal, State, and local permit number(s) for leachate disposal;
- (8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;
- (9) The remaining capacity (dry metric tons) for the active sewage sludge unit;
- (10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;
- (11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:
 - (a) The name, contact person, and mailing address of the facility; and
 - (b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;
- (12) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;
- (13) The following information, as applicable to any ground-water monitoring occurring at the active sewage sludge unit:

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- (a) A description of any ground-water monitoring occurring at the active sewage sludge unit;
 - (b) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water;
 - (c) A copy of any ground-water monitoring plan that has been prepared for the active sewage sludge unit;
 - (d) A copy of any certification that has been obtained from a qualified ground-water scientist that the aquifer has not been contaminated; and
- (14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request;

10. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

- a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;
- b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:
 - (1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and
 - (2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator;

11. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

- a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;
- b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

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c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulation, 9 VAC 20-80-10 et seq.;

12. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal;

13. At the request of the Board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 9 VAC 25-31-420 et seq., and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board; and

14. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

[Note 1: Until further notice paragraph G 7 ~~h~~e (1) and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.]

[Note 2: Until further notice paragraph G 7 ~~h~~e (1) and the corresponding portions of Item V - C of the VPDES application Form 2c are suspended as they apply to:

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (1999)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (1999)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

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

[Note 3: Until further notice paragraph G 7 ~~be~~ (1) and the corresponding portions of Item V - C of the VPDES application Form 2c are suspended as they apply to:

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (1999)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

b. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

c. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (1999)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

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

9 VAC 25-31-110. Signatories to permit applications and reports.

A. Applications.

All permit applications shall be signed as follows:

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1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities ~~employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars if)~~ , provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

B. Reports, etc.

All reports required by permits, and other information requested by the Board shall be signed by a person described in paragraph A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in paragraph A of this section;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters

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for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

3. The written authorization is submitted to the Department.

C. Changes to authorization.

If an authorization under paragraph B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph B of this section must be submitted to the Department prior to or together with any reports, or information to be signed by an authorized representative.

D. Certification.

Any person signing a document under paragraph A or B of this section shall make the following certification:

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

9 VAC 25-31-120. Storm water discharges.

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a VPDES permit except:

- a. A discharge with respect to which a permit has been issued prior to February 4, 1987;

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- b. A discharge associated with industrial activity;
- c. A discharge from a large municipal separate storm sewer system;
- d. A discharge from a medium municipal separate storm sewer system; or
- e. A discharge which either the Board or the Regional Administrator determines to contribute to a

violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph A 2 of this section or agricultural storm water runoff which is exempted from the definition of point source.

The Board may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Board may consider the following factors:

- (1) The location of the discharge with respect to surface waters;
- (2) The size of the discharge;
- (3) The quantity and nature of the pollutants discharged to surface waters; and
- (4) Other relevant factors.

2. The Board may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

3. a. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The Board may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges

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owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a permit application under the following guidelines:

(a) The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

(b) The permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, that are under the purview of the designated regional authority, shall comply with the application requirements of paragraph C of this section.

d. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Board may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions

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relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

f. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

4. In addition to meeting the requirements of paragraph B of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing VPDES permit number.

5. The Board may issue permits for municipal separate storm sewers that are designated under paragraph A 1 e of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

6. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Board, in its discretion, may issue: a single VPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into surface waters; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

a. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to surface waters, with each discharger to the non-municipal conveyance a co-permittee to that permit.

b. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

c. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

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7. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 9 VAC 25-31-100 and are not subject to the provisions of this section.

8. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

9. a. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph A.1 of this section to obtain a permit, operators shall be required to obtain a VPDES permit only if:

(1) The discharge is from a small MS4 required to be regulated pursuant to 9 VAC 25-31-121 B;

(2) The discharge is a storm water discharge associated with small construction activity as defined in 9 VAC 25-31-10;

(3) The Board or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(4) The Board or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of small MS4s designated pursuant to paragraphs A 9 a (1), A 9 a (3), and A 9 a (4) of this section shall seek coverage under a VPDES permit in accordance with 9 VAC 25-31-121 C through 9 VAC 25-31-121 E. Operators of non-municipal sources designated pursuant to paragraphs A 9 a (2), A 9 a (3), and A 9 a (4) of this section shall seek coverage under a VPDES permit in accordance with 9 VAC 25-31-120 B 1.

c. Operators of storm water discharges designated pursuant to paragraphs A 9 a (3) and A 9 a (4) of this section shall apply to the Board for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the Board.

B. Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

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1. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit, or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Board is evaluating for designation under paragraph A 1 e of this section and is not a municipal separate storm sewer, shall submit a VPDES application in accordance with the requirements of 9 VAC 25-31-100 as modified and supplemented by the provisions of the remainder of this paragraph. ~~Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C or Form 2E as appropriate, and Form 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F.~~

a. Except as provided in paragraphs B 1 b through d, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(1) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR Part 262.34 (1999)); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which

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pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(3) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a VPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(5) Quantitative data based on samples collected during storm events and collected in accordance with 9 VAC 25-31-100 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(a) Any pollutant limited in an effluent guideline to which the facility is subject;

(b) Any pollutant listed in the facility's VPDES permit for its process wastewater (if the facility is operating under an existing VPDES permit);

(c) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(d) Any information on the discharge required under paragraphs 9 VAC 25-31-100 G 7 e_f and e_g of this part;

(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(f) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

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(6) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of 9 VAC 25-31-100 G 2, G 3, G 4, G 5, G 7 ~~ac~~, G 7 d, G 7 ~~be~~, and G 7 ~~eh~~; and

(7) Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph B 1 a (5) of this section instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph B 1 a (5) of this section within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the VPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of 9 VAC 25-31-100 K 3 b, K 3 c, and K 5.

b. The operator of an existing or new storm water discharge that is associated with construction activity solely or is associated with small construction activity solely, is exempt from the requirements of 9 VAC 25-31-100 G and paragraph B 1 a of this section. Such operator shall provide a narrative description of:

(1) The location (including a map) and the nature of the construction activity;

(2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(3) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;

(4) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;

(5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(6) The name of the receiving water.

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c. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph B 1 a of this section, unless the facility:

(1) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR Part 117.21 (1999) or 40 CFR Part 302.6 (1999) at anytime since November 16, 1987; or

(2) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR Part 110.6 (1999) at any time since November 16, 1987; or

(3) Contributes to a violation of a water quality standard.

d. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

e. Applicants shall provide such other information the Board may reasonably require to determine whether to issue a permit and may require any facility subject to paragraph B 1 b of this section to comply with paragraph B 1 a of this section.

C. Application requirements for large and medium municipal separate storm sewer discharges.

The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Board under paragraph A 1 e of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph A 1 e of this section shall include;

1. Part 1 of the application shall consist of:

a. The applicants' name, address, telephone number of contact person, ownership status and status as a state or local government entity;

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b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph C 2 a of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;

c. Source identification.

(1) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(a) The location of known municipal storm sewer system outfalls discharging to surface waters;

(b) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(d) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a VPDES permit;

(e) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(f) The identification of publicly owned parks, recreational areas, and other open lands;

d. Discharge characterization.

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

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(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(a) Assessed and reported in Section 305(b) reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Law and CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(b) Listed under Section 304(l)(1)(A)(i), Section 304(l)(1)(A)(ii), or Section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(c) Listed in State Nonpoint Source Assessments required by Section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under Section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(e) Areas of concern of the Great Lakes identified by the International Joint Commission;

(f) Designated estuaries under the National Estuary Program under Section 320 of the CWA;

(g) Recognized by the applicant as highly valued or sensitive waters;

(h) Defined by the state or U.S. Fish and Wildlife Services's National Wetlands Inventory as wetlands; and

(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

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(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136 (1999), the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

- (a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;
- (b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;
- (c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;
- (d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;
- (e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

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(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs C 1 d (4) (a) through (f) of this section, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(5) Information and a proposed program to meet the requirements of paragraph C 2 c of this section. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph C 2 c (1) of this section, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see paragraph C 1 d (3) of this section) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and

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emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and

f. Fiscal resources.

A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(4) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, permits, contracts or orders; and

(6) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer;

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b. The location of any major outfall that discharges to surface waters that was not reported under paragraph C 1 c (2) (a) of this section. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

c. When quantitative data for a pollutant are required under paragraph C 2 c (1) (c) of this paragraph, the applicant must collect a sample of effluent in accordance with 9 VAC 25-31-100 G 7 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (1999). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(1) Quantitative data from representative outfalls designated by the Board (based on information received in Part 1 of the application, the Board shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Board shall designate all outfalls) developed as follows:

(a) For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements at 9 VAC 25-31-100 G 7 (the Board may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under paragraphs C 2 c (1) (a) and (1) (b) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D (1999), and for the following pollutants:

Total suspended solids (TSS)

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Total dissolved solids (TDS)

COD

BOD 5

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(d) Additional limited quantitative data required by the Board for determining permit conditions (the Board may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under 9 VAC 25-31-100 C 7) for BOD 5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either paragraph C 2 b or C 1 c (2) (a) of this section of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph C 2 c (1) of this section; and

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(4) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program which covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Board when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph C 2 d (4) of this section;

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(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph C 2 d (3) of this section); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate VPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming

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pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);

(b) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances - MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(3) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

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(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph C 2 d (3) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing VPDES permit for a facility; oil and grease, COD, pH, BOD 5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 9 VAC 25-31-100 G 7 e_f and d_g; and

(4) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

- (a) A description of procedures for site planning which incorporate consideration of potential water quality impacts;
 - (b) A description of requirements for nonstructural and structural best management practices;
 - (c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and
 - (d) A description of appropriate educational and training measures for construction site operators;
- e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water;
- f. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs C 2 c and d of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;
- g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

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h. Where requirements under paragraph C 1 d (5), C 2 b, C 2 c (2), and C 2 d of this section are not practicable or are not applicable, the Board may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph A 1 e of this section, or which is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I (1999) (except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties) from such requirements. The Board shall not exclude the operator of a discharge from a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I (1999) from any of the permit application requirements under this paragraph except where authorized under this section.

D. Application deadlines.

Any operator of a point source required to obtain a permit under this section that does not have an effective VPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

1. Individual applications.

a. Except as provided in paragraph D 1 b of this section, for any storm water discharge associated with industrial activity as defined in this regulation which is not authorized by a storm water general permit, a permit application made pursuant to paragraph B of this section shall be submitted to the Department by October 1, 1992;

b. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications must be submitted to the Department by March 10, 2003;

2. For any discharge from a large municipal separate storm sewer system:

a. Part 1 of the application shall be submitted to the Department by November 18, 1991;

b. Based on information received in the Part 1 application the Board will approve or deny a sampling plan under paragraph C 1 d (5) of this section within 90 days after receiving the Part 1 application; and

c. Part 2 of the application shall be submitted to the Department by November 16, 1992;

3. For any discharge from a medium municipal separate storm sewer system:

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- a. Part 1 of the application shall be submitted to the Department by May 18, 1992;
 - b. Based on information received in the Part 1 application the Board will approve or deny a sampling plan under paragraph C 1 d (5) of this section within 90 days after receiving the Part 1 application; and
 - c. Part 2 of the application shall be submitted to the Department by May 17, 1993;
4. A permit application shall be submitted to the Department within 180 days of notice, unless permission for a later date is granted by the Board, for:
- a. A storm water discharge which either the Board or the Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters; or
 - b. A storm water discharge subject to paragraph B 1 e of this section;
5. Facilities with existing VPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application in accordance with the requirements of 9 VAC 25-31-100 and 9 VAC 25-31-120 C (Form 1, Form 2F, and other applicable forms) 180 days before the expiration of such permits.
6. For any storm water discharge associated with small construction activity , see 9 VAC 25-31-100 C 1. Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.
7. For any discharge from a regulated small MS4, the permit application made under 9 VAC 25-31-121 C must be submitted to the Department by:
- a. March 10, 2003 if designated under 9 VAC 25-31-121 B 1 unless your MS4 serves a jurisdiction with a population under 10,000 and the Board has established a phasing schedule under 40 CFR Part 123.35(d)(3) (1999); or
 - b. Within 180 days of notice, unless the Board grants a later date.

E. Petitions.

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1. Any operator of a municipal separate storm sewer system may petition the Board to require a separate VPDES permit for any discharge into the municipal separate storm sewer system.
2. Any person may petition the Board to require a VPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.
3. The owner or operator of a municipal separate storm sewer system may petition the Board to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR Part 35.2005(b)(11) (1999) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the VPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.
4. Any person may petition the Board for the designation of a large, medium or small municipal separate storm sewer system as defined by this regulation.
5. The Board shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the Board shall make a final determination on the petition within 180 days after its receipt.

F. Conditional exclusion for no exposure of industrial activities and materials to storm water.

Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt or runoff, and the discharger satisfies the conditions in paragraphs F 1 through F 4 of this section. No exposure means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage,

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loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. To qualify for this exclusion, the operator of the discharge must:

- a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;
- b. Complete and sign (according to 9 VAC 25-31-110) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph F 2 of this section;
- c. Submit the signed certification to the Department once every five years;
- d. Allow the Department inspect the facility to determine compliance with the no exposure conditions;
- e. Allow the Department to make any no exposure inspection reports available to the public upon request; and
- f. For facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Storm resistant shelter is not required for:

- a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("Sealed" means banded or otherwise secured and without operational taps or valves);
 - b. Adequately maintained vehicles used in material handling; and
 - c. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).
3. a. Storm water discharges from construction activities are not eligible for this conditional exclusion.
- b. This conditional exclusion from the requirement for a VPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

c. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to

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enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

d. Notwithstanding the provisions of this paragraph, the Board retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

4. The no exposure certification must require the submission of the following information, at a minimum, to aid the Board in determining if the facility qualifies for the no exposure exclusion:

a. The legal name, address and phone number of the discharger;

b. The facility name and address, the county name and the latitude and longitude where the facility is located;

c. The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

- (1) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;
- (2) Materials or residuals on the ground or in storm water inlets from spills/leaks;
- (3) Materials or products from past industrial activity;
- (4) Material handling equipment (except adequately maintained vehicles);
- (5) Materials or products during loading/unloading or transporting activities;
- (6) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);
- (7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;
- (8) Materials or products handled/stored on roads or railways owned or maintained by the discharger;
- (9) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);
- (10) Application or disposal of process wastewater (unless otherwise permitted); and

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(11) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

d. All no exposure certifications must include the following certification statement, and be signed in accordance with the signatory requirements of 9 VAC 25-31-110: “I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of no exposure and obtaining an exclusion from VPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under 9 VAC 25-31-120 F 2). I understand that I am obligated to submit a no exposure certification form once every five years to the Department of Environmental Quality and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the Department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a VPDES permit prior to any point source discharge of storm water associated with industrial activity from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

9 VAC 25-31-170. General permits.

A. Coverage.

The Board may issue a general permit in accordance with the following:

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1. The general permit shall be written to cover ~~a category~~ one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under paragraph A 2 b of this section, except those covered by individual permits, within a geographic area. The area ~~shall~~ should correspond to existing geographic or political boundaries, such as:

- a. Designated planning areas under Sections 208 and 303 of CWA;
- b. Sewer districts or sewer authorities;
- c. City, county, or state political boundaries;
- d. State highway systems;
- e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
- g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in paragraph A 1 of this section, where the sources within a covered subcategory of discharges are either:

- a. Storm water point sources; or
- b. ~~A category~~ One or more categories or subcategories of point sources other than storm water point sources, or ~~a category~~ one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

- (1) Involve the same or substantially similar types of operations;
- (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
- (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
- (4) Require the same or similar monitoring; and

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(5) In the opinion of the Board, are more appropriately controlled under a general permit than under individual permits.

3. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to 9 VAC 25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this regulation.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in paragraphs B 2 e and B 2 f of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph B 2 e of this section, contains a provision that a notice of intent is not required or the Board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph B 2 f of this section. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this regulation.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s).

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General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with 9 VAC 25-31-110.

- c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit.
- d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Board. Coverage may be terminated or revoked in accordance with paragraph B 3 of this section.
- e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Board, be authorized to discharge under a general permit without submitting a notice of intent where the Board finds that a notice of intent requirement would be inappropriate. In making such a finding, the Board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.
- f. The Board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph B 3 c of this section.

3. Requiring an individual permit.

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a. The Board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the Board to take action under this paragraph. Cases where an individual VPDES permit may be required include the following:

- (1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;
- (4) A Water Quality Management plan containing requirements applicable to such point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or
- (7) The discharge(s) is a significant contributor of pollutants. In making this determination, the Board may consider the following factors:
 - (a) The location of the discharge with respect to surface waters;
 - (b) The size of the discharge;
 - (c) The quantity and nature of the pollutants discharged to surface waters; and
 - (d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The Board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and certain other facilities covered

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by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the Board decides that an individual permit is required under this section, except as provided in paragraph b (3) of this section, the Board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section, the Board may require the discharger to submit a permit application or other information regarding the discharge under the Law and Section 308 of the CWA. In requiring such information, the Board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9 VAC 25-31-120 A 1 within 60 days of notice or under 9 VAC 25-31-120 A 9 within 180 days of notice, unless permission for a later date is granted by the Board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9 VAC 25-31-100, with reasons supporting the request. The request shall be processed under the applicable parts of this regulation. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

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9 VAC 25-31-220. Establishing limitations, standards, and other permit conditions.

In addition to the conditions established under 9 VAC 25-31-210 A, each VPDES permit shall include conditions meeting the following requirements when applicable.

A. Technology-based effluent limitations and standards.

1. Technology-based effluent limitations and standards established in accordance with the criteria and standards of 40 CFR Part 125, Subpart A (1999) and based on the effluent limitations and standards incorporated by reference in 9 VAC 25-31-30, based on case by case effluent limitations determinations, or based on a combination of the two based on effluent limitations and standards promulgated under section 301 of the CWA, on new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9 VAC 25-31-180 B (protection period).

2. The Board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N (2000) if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant

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must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

1. Other effluent limitations and standards under Sections 301, 302, 303, 307, 318 and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under Section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Board shall institute proceedings under this regulation to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

2. Standards for sewage sludge use or disposal under Section 405(d) of the CWA and Part VI of this regulation unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or in another permit issued by the Department of Environmental Quality, the Virginia Department of Health or any other appropriate state agency under another permit program approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under Section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Board may initiate proceedings under this regulation to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

C. Reopener clause.

~~For any discharger within a primary industry category as listed in 40 CFR Part 122 Appendix A (1999), requirements under Section 307(a)(2) of CWA as follows:~~

~~1. On or before June 30, 1981:~~

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~~_____ a. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated under Sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.~~

~~_____ b. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations. (If EPA approves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the Federal Register that the limitations are approved for the purpose of this regulation.)~~

~~_____ 2. On or after the statutory deadline set forth in Section 301(b)(2) (A), (C), and (E) of CWA, any permit issued shall include effluent limitations to meet the requirements of Section 301(b)(2) (A), (C), (D), (E), (F), whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by paragraph C 1 of this section.~~

~~_____ 3. The Board shall promptly modify or revoke and reissue any permit containing the clause required under paragraph C 1 of this section to incorporate an applicable effluent standard or limitation under Sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) of the CWA which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.~~

~~_____ 4. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the Board shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under Section 405(d) of the CWA. The Board may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.~~

D. Water quality standards and state requirements.

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Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318 and 405 of CWA necessary to:

1. Achieve water quality standards established under the Law and Section 303 of the CWA, including state narrative criteria for water quality.
 - a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.
 - b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the Board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.
 - c. When the Board determines, using the procedures in paragraph D 1 b of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.
 - d. Except as provided in this subparagraph, when the Board determines, using the procedures in paragraph D 1 b of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in paragraph D 1 b of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.
 - e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion

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above a narrative criterion within an applicable Virginia water quality standard, the Board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under Section 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9 VAC 25-31-280 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the Board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this paragraph the Board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

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(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR Part 130.7 (1999);

2. Attain or maintain a specified water quality through water quality related effluent limits established under the Law and Section 302 of CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the Law and Section 401 of the CWA.;

4. Conform to applicable water quality requirements under Section 401(a)(2) of CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the Law or regulations in accordance with Section 301(b)(1)(C) of CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under Section 208(b) of CWA;

7. Incorporate Section 403(c) criteria under 40 CFR Part 125, Subpart M (1999), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D (1999).

E. Technology-based controls for toxic pollutants.

Limitations established under paragraphs A, B, or D of this section, to control pollutants meeting the criteria listed in paragraph E 1 of this section. Limitations will be established in accordance with paragraph E 2 of this section. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants which the Board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee;
or

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2. The requirement that the limitations control the pollutants meeting the criteria of paragraph E 1 of this section will be satisfied by:

- a. Limitations on those pollutants; or
- b. Limitations on other pollutants which, in the judgment of the Board, will provide treatment of the pollutants under paragraph E 1 of this section to the levels required by the Law and 40 CFR Part 125, Subpart A (1999).

F. Notification level.

A notification level which exceeds the notification level of 9 VAC 25-31-200 A 1 a, b, or c, upon a petition from the permittee or on the Board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

G. Twenty-four-hour reporting.

Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9 VAC 25-31-190 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

H. Durations for permits, as set forth in 9 VAC 25-31-240.

I. Monitoring requirements.

The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

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3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9 VAC 25-31-190 and in paragraphs I 5 through 8 of this section. Reporting shall be no less frequent than specified in the above regulation;
4. To assure compliance with permit limitations, requirements to monitor:
 - a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;
 - b. The volume of effluent discharged from each outfall;
 - c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI of this regulation; or as determined to be necessary on a case-by-case basis pursuant to the Law and Section 405(d)(4) of the CWA; and
 - d. According to test procedures approved under 40 CFR Part 136 (1999) for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;
5. Except as provided in paragraphs I 7 and I 8 of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part VI of this regulation (where applicable), but in no case less than once a year;
6. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;
7. Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph I 6 of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

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a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loading identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9 VAC 25-31-110; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements; and

8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9 VAC 25-31-190 L 1, 4, 5, 6, and 7 at least annually.

J. Pretreatment program for POTWs.

Requirements for POTWs to:

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under Section 307(b) of CWA and Part VII of this regulation;

2. Submit a local program when required by and in accordance with Part VII to assure compliance with pretreatment standards to the extent applicable under Section 307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII;

3. Provide a written technical evaluation of the need to revise local limits under Part VII following permit issuance or reissuance; and

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.4. For POTWs which are sludge-only facilities, a requirement to develop a pretreatment program under Part VII when the Board determines that a pretreatment program is necessary to assure compliance with Part VI of this regulation.

K. Best management practices.

Best management practices, ~~developed according to the criteria and standards of 40 CFR Part 125, Subpart K (1999)~~ to control or abate the discharge of pollutants when:

1. Authorized under Section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;
2. Authorized under Section 402(p) of CWA for the control of storm water discharges;
3. Numeric effluent limitations are infeasible; or
4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Law and the CWA.

L. Reissued permits.

1. In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Section 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of Sections 301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with Section 303(d)(4) of the CWA.

2. Exceptions - A permit with respect to which paragraph L 1 of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

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b. (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The Board determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under Section 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the Law and Section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph L 2 b of this section shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the Law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which paragraph L 2 of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

M. Privately owned treatment works.

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For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the Board may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Board's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

N. Grants.

Any conditions imposed in grants made by the Board to POTWs under Sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under Section 301 of CWA and the Law.

O. Sewage sludge.

Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use regulated by Part VI of this regulation.

P. Coast Guard.

When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Q. Navigation.

Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9 VAC 25-31-330.

R. Qualifying State, Tribal, or local programs.

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1. For storm water discharges associated with small construction activity identified in 9 VAC 25-31-10, the Board may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in 9 VAC 25-31-220 R 1 (this paragraph), then the Board must include those elements as conditions in the permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

- a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
- b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
- c. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved state, tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and
- d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For storm water discharges from construction activity that does not meet the definition of a small construction activity, the Board may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal or local erosion and sediment control program is one that includes the elements listed in paragraph R 1 of this section and any additional requirements necessary to achieve the applicable technology-based standards of “best available technology” and “best conventional technology” based on the best professional judgment of the permit writer.

9 VAC 25-31-280. Fact sheet.

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A. A fact sheet shall be prepared for every draft permit for a major VPDES facility or activity, for every Class I sludge management facility, for every VPDES general permit, for every VPDES draft permit that incorporates a variance or requires an explanation under paragraph B 8 of this section, for every draft permit that includes a sewage sludge land application plan under 9 VAC 25-31-100 C 2, and for every draft permit which the Board finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Board shall send this fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity which is the subject of the draft permit;
2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;
5. A description of the procedures for reaching a final decision on the draft permit including:
 - a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;
 - b. Procedures for requesting a public hearing and the nature of that hearing; and
 - c. Any other procedures by which the public may participate in the final decision;
6. Name and telephone number of a person to contact for additional information;
7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

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8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
 - a. Limitations to control toxic pollutants;
 - b. Limitations on internal waste streams;
 - c. Limitations on indicator pollutants; ~~or~~
 - d. Technology-based or sewage sludge disposal limitations set on a case-by-case basis;
 - e. Limitations to meet the criteria for permit issuance under 9 VAC 25-31-50; or
 - f. Waivers from monitoring requirements granted under 9 VAC 25-31-220 A;
9. For every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the Board's decision on regulation of users;
10. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application;
11. For permits that include a sewage sludge land application plan under 9 VAC 25-31-100 P 8 e, a brief description of how each of the required elements of the land application plan are addressed in the permit; and
12. Justification of waiver of any application requirements under 9 VAC 25-31-100 J or P.

9 VAC 25-31-370. Modification, revocation and reissuance, or termination of permits.

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Board's initiative. When the Department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) it may determine whether or not one or more of the causes listed in this section for modification or revocation and reissuance or both exist. However, permits

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may only be modified, revoked and reissued, or terminated for the reasons specified in 9 VAC 25-31-390 or 9 VAC 25-31-410. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the Board shall not modify, revoke and reissue or terminate the permit. If a permit modification satisfies the criteria for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part IV followed.

B. If the Board decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the Board tentatively decides to modify or revoke and reissue a permit, it shall prepare a draft permit incorporating the proposed changes. The Board may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Board shall require the submission of a new application.

2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued and the permit is reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

3. Minor modifications as defined in 9 VAC 25-31-400 are not subject to the requirements of this section.

D. If the Board tentatively decides to terminate a permit under 9 VAC 25-31-410, where the permittee objects, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit.

9 VAC 25-31-390. Modification or revocation and reissuance of permits.

A. Causes for modification.

The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. The Department has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For VPDES general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger VPDES permits this cause shall include any significant information derived from effluent testing required on the permit application after issuance of the permit.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations incorporated by reference in 9 VAC 25-31-30; and

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(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(3) A permittee requests modification in accordance with this regulation within ninety (90) days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this regulation within ninety (90) days of judicial remand; or

c. For changes based upon modified state certifications of VPDES permits.

4. The Board determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a VPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the permittee has filed a request for a variance pursuant to 9 VAC 25-31-100 L or M within the time specified in this regulation.

6. When required to incorporate an applicable CWA Section 307(a) toxic effluent standard or prohibition.

7. When required by the reopener conditions in a permit which are established under 9 VAC 25-31-220 B or C or 9 VAC 25-31-800 E.

8. a. Upon request of a permittee who qualifies for effluent limitations on a net basis under 9 VAC 25-31-230 G.

b. When a discharger is no longer eligible for net limitations as provided in 9 VAC 25-31-230 G 1 b.

9. As necessary under 9 VAC 25-31-800 E for a pretreatment program.

10. Upon failure to notify another state whose waters may be affected by a discharge.

11. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

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12. To establish a notification level as provided in 9 VAC 25-31-220 F.

13. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under Section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under Section 202(a)(2) of CWA. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

14. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

15. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under the Law and Section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

16. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

17. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 9 VAC 25-31-121 D 2 when:

- a. The permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and
- b. The other entity fails to implement measures that satisfy the requirements.

B. Causes for modification or revocation and reissuance.

The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under 9 VAC 25-31-410, and the Board determines that modification or revocation and reissuance is appropriate; or

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2. The Department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

9 VAC 25-31-410. Termination of permits.

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation or order of the Board, any provision of the Law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which in the opinion of the Board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. Noncompliance by the permittee with any condition of the permit;

3. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a permit, or in any other report or document required under the Law or this regulation;

4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice controlled by the permit; or

6. There exists a material change in the basis on which the permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit necessary to protect human health or the environment.

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B. The Board shall follow the applicable procedures in this regulation in terminating any VPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the Board may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the Board shall follow the applicable procedures for termination under 9 VAC 25-31-370 D. Expedited permit termination procedures are not available to permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.