


MEMORANDUM

Department of Environmental Quality
Division of Water Program Coordination

SUBJECT: Guidance Memo No. 01-2007
Implementation Guidance for December, 2000 Revisions to the VPDES Permit Regulation

TO: Regional Directors

FROM: Larry G. Lawson, P.E. 

DATE: March 15, 2001

COPIES: Regional Permit Managers, Regional Compliance and Enforcement Managers, Water Permit Managers, Mary Jo Leugers, Martin Ferguson, OWPP staff

On December 13, 2000 the State Water Control Board adopted amendments to the VPDES Permit Regulation, 9 VAC 25-31-10 et seq. The amendments were adopted as final, without public participation, under the technical amendment provision of the Administrative Process Act. They were published in the Virginia Register on March 12, 2001 and their effective date is April 11, 2001. The purpose of this memo is to identify the regulation changes and to give guidance, where necessary, for their implementation in the VPDES permit process. The affected sections are attached with changes noted by strike through and underline. The full text of the revised regulation is posted on DEQNet in the VPDES Permits section. If you have questions about the regulation amendments or this implementation guidance, please contact Richard Ayers.

These changes are necessitated by recent changes to the federal NPDES regulations. On May 15, 2000, EPA published revisions to its permit requirements in 40 CFR Parts 122, 123, 124, and 125. This is commonly known as the NPDES streamlining rule. It eliminates redundant or unnecessary regulatory language, clarifies procedures and corrects typographical errors. In addition, EPA repealed one of the effluent limitations guidelines on March 21, 2000.

The following list will describe the VPDES regulation changes and relate them to the corresponding federal regulations.

9 VAC 25-31-10:

Add a definition of "Individual Control Strategy". (40 CFR 122.2) This does not impact our current program.

Delete the first definition of "Publicly Owned Treatment Works" and amend the second so that it applies to the entire regulation. (40 CFR 122.2) This makes the definition of POTW consistent between the pretreatment program and the rest of the VPDES program.

9 VAC 25-31-30:

Delete the reference to 40 CFR Part 431: Builder's Paper and Board Mills. This effluent guideline regulation was repealed by EPA in the March 21, 2000 Federal Register. This industrial category is now included in the new 40 CFR Part 430.

9 VAC 25-31-50:

This change will allow a waiver of the requirement to submit new source or new discharger antidegradation information if the information is already on hand at DEQ. (40 CFR 122.4) It also adds a requirement that the fact sheet for the permit must contain the justification for issuing the permit when the new source or new discharge would otherwise appear to be causing or contributing to a violation of water quality standards. This justification

should already be part of the existing antidegradation review documented in the fact sheet. No additional procedures should be necessary. Note that the burden of proof for making the demonstration that standards would be maintained still falls on the applicant.

9 VAC 25-31-100:

Revise paragraph G 7 to reorganize it into separate parts for different types of discharges and to list testing and reporting requirements as separate paragraphs. This revision did not change the application requirements. Other references to paragraph G 7 in other parts of this chapter were also changed to reflect the new paragraph designations. (40 CFR 122.21) This amendment will not result in any changes to our permitting procedures.

9 VAC 25-31-110:

Revise the definition of a responsible corporate officer to delete reference to the size of the company or its annual sales and to add language that refers to the person's responsibilities to make decisions for capitol expenditures and environmental compliance. (40 CFR 122.22) This will make the designation of persons authorized to sign applications and reports more realistic. The regional offices should be sure that any newly designated "responsible corporate officer" meets these qualifications.

This change also requires a revision to the VPDES permit boilerplate Part II K 1 a. A revised permit boilerplate is attached to this guidance and it will be included in the new permit manual.

9 VAC 25-31-120:

Revise several references to paragraph G 7 to reflect the new paragraph numbers: 120 B 1; 120 B 1 a (6); and 120 C 2 d (3)(b). (40 CFR 122.26) This has no impact on permitting procedures, but is necessary in order to match the changes made to 9 VAC 25-31-100.

9 VAC 25-31-170:

Revise paragraph A 2 to recognize that general permits can be issued to one or more categories or subcategories of discharges. Add paragraphs A 3, 4, and 5 to clarify the scope of general permits. (40 CFR 122.28) Most of these provisions are already part of our general permit development process and these changes will have minimal impact. Implementation of paragraph A 3, which requires carrying over water quality-based limits from individual permits to general permits, will be accomplished by demonstrating in the fact sheet for the general permit whether or not the category needs to have the water quality-based limit.

9 VAC 25-31-220:

Revise paragraph A to clarify that the bases for the limits are sections of the Clean Water Act. (40 CFR 122.44 (a)(1)) This should not cause any changes to our permitting procedures.

Add paragraph A 2 that allows the Board to grant waivers from monitoring required by federal effluent guidelines if the permittee demonstrates that the pollutant is not present in the discharge. (40 CFR 122.44 (a)(2)) Note that this procedure only applies to promulgated effluent limitation guidelines (ELGs). Under this new provision, an industrial discharger can request a waiver from monitoring a parameter that is limited by an ELG. The permittee must show to the Department's satisfaction, through monitoring data and other evidence, such as knowledge about the facility's process and infrastructure, that the pollutant in question is not present, or expected to be present, in the effluent. If the pollutant's presence is due to background concentrations in the intake water, the permittee cannot contribute to that concentration. The waiver is good only during a single permit term and is not available during the first five years of a new permit. The permittee must request the waiver with every reissuance application in order for it to continue. DEQ is authorized to grant this type of waiver without EPA concurrence.

If the waiver is granted, the permit must still contain the limitation required by the ELG, but the monitoring frequency on the Part I A page will be 0 and sample type will be NA. Any permit with this waiver must also contain the Limitation Monitoring Waiver special condition. The fact sheet must contain the rationale for the special condition and the documentation provided by the permittee that justified the waiver. The language for the special condition and the fact sheet rationale are attached and they will be included in the new permit manual.

Revise paragraph C to delete the first three mandatory reopener clauses. (40 CFR 122.44 (c)) This eliminates the need to include the "EPA Industrial Reopener" special condition in VPDES permits. The only reopener clause remaining is the one for sludge use and disposal standards, which goes into municipal permits. The new permit manual will reflect this change.

Revise paragraph K to delete the reference to 40 CFR Part 125 Subpart K because EPA withdrew it as part of this rulemaking. (40 CFR 122.44 (k)). EPA originally planned to develop specific standards for BMPs in Subpart K, but that never happened. This housekeeping change does not affect our ability to use BMPs in VPDES permits in any way.

Revise paragraph Q to include a reference to the Corps of Engineers procedures in 9 VAC 25-31-330. (40 CFR 122.44 (q)). This is just a cross-reference to the public notice/comment provision elsewhere in the regulation. No changes to the permitting process are needed.

9 VAC 25-31-280:

Add two more conditions to paragraph B 8 regarding required content for the Fact Sheet. (40 CFR 124.56)

If the applicant is a new source or new discharger and is granted a waiver from submitting the information required by 9 VAC 25-31-50 C 9, the fact sheet must contain the justification for the waiver and the rationale for the limits needed to maintain the water quality standards.

If the permit grants relief from monitoring for parameters listed in a federal effluent guideline applicable to the discharge, the fact sheet must contain the justification for the monitoring waiver. This will be a demonstration that the parameter(s) in question is/are not present in the discharge. See the language of 9 VAC 25-31-220 A 2 for detailed requirements for the waiver.

9 VAC 25-1-370:

Revise paragraph D to reflect the changes to the rules for permit termination in 9 VAC 25-31-410 B. (40 CFR 124.5) This change limits the need for issuing a public notice for permit terminations to those cases where the permittee objects to the termination or there is a pending state or federal enforcement action. Permit terminations that are mutually agreed to by the Board and the permittee no longer require public notice.

9 VAC 25-31-390:

Revise paragraph A 8 under Causes for Modification to include a reference to the net limitations rules in paragraph 230 G. (40 CFR 122.62) The net limits provision was already in 230 G, therefore, there should be no need to change current procedures.

9 VAC 25-31-410:

Amend paragraph B to allow the Board to terminate permits without public notice as long as the permittee does not object and there is no pending enforcement action. (40 CFR 122.64) This change will allow mutually agreed to terminations to proceed without public notice. If the permittee signs the Termination Agreement Form, the regional office can then send the request for termination to the Board. If the permittee objects to the termination and there is sufficient reason to continue, the regional office should contact Central Office for assistance in initiating a formal hearing prior to bringing the termination to the Board. **Note, this change does not affect the fact that the State Water Control Law at 62.1-44.14 gives the authority to terminate permits exclusively to the State Water Control Board. Until the law is changed, all permit terminations must still be approved by the Board.** The revised termination procedures from the new permit manual are attached.

Attachments:

Revised language for VPDES Permit Regulation

Revised VPDES Permit boilerplate

Limitation Monitoring Waiver special condition

Termination Section of VPDES Permit Manual

DISCLAIMER

This document provides procedural guidance to the permit staff. This document is guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.

9 VAC 25-31-10.

Definitions.

"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.

~~"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.

9 VAC 25-31-30.

Federal Effluent Guidelines.

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

9 VAC 25-31-50.

Prohibitions.

C. No permit may be issued:

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.

9 VAC 25-31-100.

Application for a permit.

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

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 ~~ce~~ and ~~df~~ 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 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.)

ac. ~~(1)~~ Every applicant must report quantitative data for every outfall for the following pollutants:

- Biochemical Oxygen Demand (BOD 5)
- Chemical Oxygen Demand
- Total Organic Carbon
- 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.

(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 ~~be~~ 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).

dg. 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.

eh. 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.

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

A. Applications.

All permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- 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.

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

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

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.~~

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a. (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 ~~bc~~, and G 7 ~~eh~~; and

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

2. d. (3) (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 ~~ef~~ and ~~dg~~; and

9 VAC 25-31-170. General permits.

A. Coverage.

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

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
 - (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.

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 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.

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:~~

~~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.~~

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.~~

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.

9 VAC 25-31-280. Fact sheet.

A. A fact sheet shall be prepared for every draft permit for a major VPDES facility or activity, for every Class I sludge management facility, for every VPDES general permit, for every VPDES draft permit that incorporates a variance or requires an explanation under 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;
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.

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.

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 VAC 25-31-410. Termination of permits.

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.

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the Board.

C. Reporting Monitoring Results.

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

Regional office address

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the Department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under Title 40 of the Code of Federal Regulations Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to Provide Information.

The permittee shall furnish to the Department, within a reasonable time, any information which the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Board may require the permittee to furnish, upon request, such

plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

E. Compliance Schedule Reports.

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

F. Unauthorized Discharges.

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

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

G. Reports of Unauthorized Discharges.

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

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

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

H. Reports of Unusual or Extraordinary Discharges.

If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

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

I. Reports of Noncompliance

The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within 5 days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

3. The permittee shall report all instances of noncompliance not reported under Parts II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the Department's Regional Office at (XXX) XXX-XXXX (voice) or (XXX) XXX-XXXX (fax). For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24 hour telephone service at 1-800-468-8892.

J. Notice of Planned Changes.

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

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

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

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

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

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

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

K. Signatory Requirements.

1. Applications. All permit applications shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible

corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions 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;

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

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

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

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

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

c. The written authorization is submitted to the Department.

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

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

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

L. Duty to Comply.

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

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to Reapply.

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. 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.

N. Effect of a Permit.

This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State Law.

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

P. Oil and Hazardous Substance Liability.

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

Q. Proper Operation and Maintenance.

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

R. Disposal of solids or sludges.

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

S. Duty to Mitigate.

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

T. Need to Halt or Reduce Activity not a Defense.

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

U. Bypass.

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

2. Notice

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

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

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

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

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

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

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

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

W. Inspection and Entry.

The permittee shall allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

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

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

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

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

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

X. Permit Actions.

Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the Department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the Department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The Board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability.

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

PERMIT SPECIAL CONDITION TO IMPLEMENT 9 VAC 25-31-220 A 2

Limitation Monitoring Waiver *(for permits where a waiver from monitoring a technology-based effluent limitation has been granted under 9 VAC 25-31-220 A 2. Limit still appears on Part I A.)* This permit contains a waiver from monitoring for a technology-based effluent limitation granted under 9 VAC 25-31-220 A 2. The limitation appears in Part I A. The requirement for monitoring and reporting the level of [**name parameter**] in outfall [**00X**] is waived for the term of this permit. This waiver does not eliminate the effluent limitation. The permittee is liable for any violation of the permit limitation for [**name parameter**]. If the permittee changes the facility operation in a way that may result in a pollutant discharge beyond that which serves as the basis for this waiver, they shall report the change to the Department. If the permittee discovers in the discharge, pollutant levels which exceed the effluent limitation, they shall report that information to the Department.

Rationale: Monitoring for one or more technology-based effluent limitations may be waived if the permittee provides the demonstration required by 9 VAC 25-31-220 A 2. *(Include materials from the permittee as an appendix to the fact sheet)*

SECTION V -- TERMINATION PROCEDURES

A. Termination of Permits

(§ 62.1-44.15(5) and 9 VAC 25-31-410)

Permits may be terminated either at the request of the permittee, an interested person, or upon staff initiative. Avoid using the word "revoke" to mean "terminate". Termination means the permit will cease to exist. In state and federal regulations, "revoke" is only used in the phrase "revoke and reissue" and it indicates a continuing permit.

The final decision on termination of a permit may only be made by the State Water Control Board (§ 62.1-44.14). Before a permit can be terminated, the Board must give the permittee notice and an opportunity for a hearing (§ 62.1-44.15(5b)).

If a permit is close to its expiration date and the owner ceases operations or has stopped the discharge, it may be more expedient to simply allow the permit to expire. This does not require public notice. If the permittee does not want to wait until the permit expiration date, he should submit written notice to the RO advising of the reason for the request for permit termination. Make the appropriate changes to CEDS once the permit has expired.

The termination of municipal facility operations should be conducted in consultation with VDH. This may require initiation of the facility's financial assurance plan, if applicable, or a close-out plan and site inspection.

1. Causes for Permit Termination

The following are causes for terminating a permit during its term, or for denying a permit renewal application:

- a. The permittee has violated any regulation or order of the Board, any provision of the Water Control 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;
- b. Noncompliance by the permittee with any condition of the permit;
- c. 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 Water Control Law or the VPDES Permit Regulation;
- d. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit termination;
- e. 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
- f. 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. (Such as plant closure or connection to a POTW).

SECTION V -- TERMINATION PROCEDURES

2. Termination Process

a. Termination is proposed by the staff, the permittee or another interested person and the staff decides to terminate the permit.

b. Notify the permittee of the proposed termination and advise him of his right to a hearing. Include the Termination Agreement Form with the letter. See the example letter in Section L.

c. If the permittee signs and submits the Termination Agreement Form, and if there is no pending state or federal enforcement action on the permit, and if the discharge will permanently cease on or before the termination date, the RO forwards the termination request to DPL for Board action without public notice.

d. If the permittee does not agree to the termination, or if there is a pending enforcement action on the permit, contact the permittee in writing without delay and arrange a meeting to discuss the permittee's situation. The RO should make it clear to the permittee that the meeting is being held under the informal fact finding provisions of the Administrative Process Act, § 9-6.14:11.

If the permittee agrees to the termination following the ":11" hearing, follow the rest of the termination procedures in this section.

If the RO and the permittee do not reach agreement and the RO still intends to terminate the permit, a formal hearing is required before the State Water Control Board (APA § 9-6.14:12 and Procedural Rule No. 1). Contact DPL and OWPP for further guidance if a formal hearing is necessary.

e. Document all steps in the process in the permit file.

f. Interested persons should be notified of the RO's decision regarding their termination request.

3. Public Notice

If the permittee does not agree to the termination or if there is a pending state or federal enforcement action on the permit, a Notice of Intent to Terminate must be issued under 9 VAC 25-31-370 D. A Notice of Intent to Terminate is a type of draft permit which follows the same procedures as any draft permit. The format of a public notice of termination is the same as the public notice for permit issuance, except that it states the Board intends to terminate the permit. See Section III for public notice format.

4. Board Action

a. For permit terminations done without public notice, the RO notifies DPL that the permit termination is ready to be placed before the Board. Include with each permit the applicable cause for termination. If a formal hearing is held before the Board, the permit termination will be done then.

b. If there is a pending enforcement action, but the permittee agrees to the termination, the permit may be terminated by the Board after public notice, without holding a public hearing.

c. DPL compiles the RO termination list and sends to the Board Members for approval by placing it on the upcoming meeting agenda.

d. If the termination is approved by the Board, the RO prepares the minute of the Board decision, and sends the original minute to DPL. One copy is sent to OWPP and one copy is retained for the RO files. The RO notifies the permittee by sending a copy of the minute from the Board meeting, and a transmittal letter (Refer to example in Section L). This notification to the permittee must be sent by certified

SECTION V -- TERMINATION PROCEDURES

mail (§ 62.1-44.15(9)).

5. **Update CEDS**

The RO will modify CEDS to reflect the facility's change in status.

B. **Denial of Requests for Termination**

(9 VAC 25-31-370 B)

Prepare a letter to the requestor giving reasons for the denial. Denials of requests for termination are not subject to public notice, comment or hearings.