

TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING

WEDNESDAY, JUNE 22, 2022

IN PERSON ONLY – GALLERY, COMMUNITY COLLEGE WORKFORCE ALLIANCE,
1651 EAST PARHAM ROAD, RICHMOND, VA 23228

Meeting will be Live-Streamed. Go to: www.deq.virginia.gov
Any Updates To Details/Final Arrangements To Be Announced On Virginia Regulatory Town Hall

Convene – 10:30 A.M

Agenda Item	Presenter		Tab
Minutes (March 25, 2022)	Porterfield		A
Fast-track Regulations			
<i>Repeal Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations, 9VAC 25-191</i>	Bowles	pg 5	B
Overview of Chapter 356 of the 2022 Acts of Assembly	Jenkins	pg 38	C
Final exempt			
<i>Occoquan Policy- 9VAC25-410</i>	Sivers	pg 57	D
<i>Chesapeake Bay Preservation Area Designation and Management Regulation- 9VAC25-830</i>	Williams	pg 70	E
<i>Virginia Stormwater Management Program (VSMP) Regulation- 9VAC 25-870</i>	Davenport	pg 97	F
<i>Certification of Nonpoint Source Nutrient Credits- 9VAC25-900</i>	Davenport	pg 203	G
Final Regulations			
<i>General Permit for Use of the Surficial Aquifer in a Groundwater Management Area- 9VAC25-920</i>	Grist	pg 235	H
Proposed Regulations			
<i>Reissuance of Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Non-Contact Cooling Water Discharges of 50,000 Gallons Per Day or Less 9VAC25-196</i>	Bryan	pg 285	I
<i>Local and Regional Water Supply Planning- 9VAC25-780</i>	Kudlas	pg 334	J
Receipt of Significant Noncompliance Report and Chesapeake Bay Preservation Act Program Notices of Violations	Steers	pg 385	K

Agenda Item	Presenter	Tab
Consent Special Order <i>LVL Data Center / HITT Contracting, Inc.</i>	Steers pg 386	L
<i>Waste Management of Virginia, Inc. – Charles City County Landfill</i>	Steers pg 405	M
Other Business		
Guidelines for the Stormwater Local Assistance Fund Program Future Meetings (August 25, 2022, November 29, 2022 and staffing discussion)	Link pg 426 Porterfield	N
Mountain Valley Pipeline - Update Public Forum (time not to exceed 45 minutes - no public comment on Mountain Valley Pipeline)	Davenport	

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Melissa S. Porterfield at (804) 698-4238.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may an additional comment period during which a public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Melissa S. Porterfield, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4238, e-mail: Melissa.porterfield@deq.virginia.gov .

Additional Meeting Information:

- Attendees may not erect any signage inside or outside the meeting room or building.
- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.

- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the complex, its employees and guests.
- Attendees wishing to record the proceedings are welcome to do so; however, you may not interfere with the business of the meeting, nor impede the view or participation of other meeting attendees and staff.
- No smoking is allowed unless in a designated outside space. This includes tobacco & e-cigarettes.
- No alcohol, fireworks, pyrotechnics, weapons, or any substances/items controlled by law are allowed.
- No firearms are allowed in the State's contracted spaces except for firearms carried by law-enforcement officers or authorized security personnel.
- All violators may be subject to removal from the meeting facility.
- Anyone removed from the facility may not reenter.
- Anyone who fails to comply with removal may be charged with trespass.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Betsy K. Bowles, Animal Feeding Operations Program Coordinator

Betsy K. Bowles

DATE: May 9, 2022

SUBJECT: Request to Proceed to Notice of Public Comment on the Action to Repeal the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations Regulation (9VAC25-191).

Introduction

At the June 22, 2022 meeting, staff intends to bring to the Board a request to proceed to notice of public comment using the Fast-Track Process to Repeal the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations Regulation (9VAC25-191). The Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations (9 VAC 25-191) was adopted by the State Water Control Board on August 31, 2004; the regulation expired December 31, 2010 and has not been re-issued. This general permit regulation does not allow the Board to provide the public notice opportunities as required by the Federal Concentrated Animal Feeding Operations (CAFO) Rule. CAFOs are now regulated under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). A VPDES individual permit is issued to livestock and poultry CAFOs that meet the discharge criteria, and the individual permit process provides the public notice opportunities as required by the Federal CAFO Rule. This general permit regulation is no longer needed. A periodic review was conducted of this regulation in 2021 and the result of the periodic review was to repeal the regulation.

Statutory Authority

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15 (5) authorizes the Board to issuance of permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15 (7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15 (10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15 (14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.17 specifies the Board's authority to regulate discharges of other wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

The State Water Control Board has the authority to administer the federal NPDES program within the Commonwealth, and as such, the program is called the VPDES program. Operations that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges. CAFOs are currently regulated in Virginia under the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32), the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192), the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630), and the VPDES Permit Regulation (9VAC25-31). CAFOs that discharge are required to obtain an individual VPDES permit under the authority of the VPDES Permit Regulation (9VAC25-31).

Background

The existing Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations Regulation (9VAC25-191) governs the authorization to manage pollutants from CAFOs. The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations that meet the federal definition of a CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit, if the operation discharges. CAFOs that do not discharge are regulated in Virginia under the Virginia Pollution Abatement (VPA) permit regulation (9VAC25-32), the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192), and the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630). Currently, under the authority of the VPDES permit regulation (9VAC25-31), individual permits have been issued to the owners of CAFOs that discharge or to owners who request this permit. Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry Animal Feeding Operations (AFOs) and CAFOs.

Since this promulgation of this regulation, the federal CAFO Rule has been amended several times. One amendment added the requirement to provide an opportunity for the public to comment on the draft permit and the site specific nutrient management plan prior to a CAFO

owner obtaining a permit. For a general permit, the opportunity for public comment occurs during the regulatory process to promulgate a general permit regulation, not at the time that the department provides coverage to an individual owner of a CAFO. For this reason, the department determined that another means to provide the public the opportunity to comment was necessary. Since the VPDES Permit Regulation already establishes a public comment period prior to issuance of an individual VPDES permit to a CAFO owner, the department developed procedures to issue VPDES CAFO individual permits when VPDES coverage was necessary.

The department vetted the individual permit and a permit template concept to stakeholders during a previous regulatory action. The department has since developed the permit template and fine-tuned the process to develop, draft and finalize VPDES CAFO individual permits. The permit template has facilitated a smooth and efficient process in which CAFO owners can obtain an individual permit in a timely manner without sacrificing the benefits of public participation during the issuance, reissuance and modification of permits.

Using the fast-track process to repeal this regulation will not be controversial because the general permit associated with this regulation is expired and no activities are currently covered by this regulation. Repealing this regulation will only be advantageous to the public and to the Commonwealth because it will eliminate confusion as to the mechanism (individual permit versus general permit) that is being used to implement the requirements under the VPDES program that must be adhered to by owners of CAFOs that discharge.

Attachments

1. Fast Track Regulation Agency Background Document (Form TH-04): 9VAC25-191
2. 9VAC25-191 Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations Regulation

Contact Information

Betsy K. Bowles, (804) 659-1913, betsy.bowles@deq.virginia.gov

State Water Control Board

Chapter 191 Agency 25 Result of Periodic Review:2069 Nov 19 2021 11:43AM

Chapter 191

Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations (REPEALED)

9VAC25-191-10. Definitions. (Repealed.)

~~The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9VAC25-31 (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:~~

~~"Agricultural storm water" means storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation is an agricultural storm water discharge.~~

~~"Animal feeding operation" or "AFO" 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.~~

~~Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.~~

~~"Best Management Practices" or "BMPs" means structural improvements, 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 site runoff, spillage or leaks, or drainage from raw material storage.~~

~~"Concentrated animal feeding operation" or "CAFO" means an animal feeding operation that is defined as a "Large CAFO" or as a "Medium CAFO," or that is designated as a "Medium CAFO" or a "Small CAFO." Any AFO may be designated as a CAFO by the director in accordance with the provisions of 40 CFR 122.23 (April 14, 2003).~~

- ~~1. "Large CAFO." An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:
 - ~~a. 700 mature dairy cattle, whether milked or dry;~~
 - ~~b. 1,000 veal calves;~~
 - ~~c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow-calf pairs;~~
 - ~~d. 2,500 swine each weighing 55 pounds or more;~~~~

- e. ~~10,000 swine each weighing less than 55 pounds;~~
- f. ~~500 horses;~~
- g. ~~10,000 sheep or lambs;~~
- h. ~~55,000 turkeys;~~
- i. ~~30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;~~
- j. ~~125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;~~
- k. ~~82,000 laying hens, if the AFO uses other than a liquid manure handling system;~~
- l. ~~30,000 ducks, if the AFO uses other than a liquid manure handling system; or~~
- m. ~~5,000 ducks, if the AFO uses a liquid manure handling system.~~

2. ~~"Medium CAFO." The term "Medium CAFO" includes any AFO that has the type and number of animals found within any of the ranges below and that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:~~

a. ~~The type and number of animals it stables or confines falls within any of the following ranges:~~

~~(1) 200 to 699 mature dairy cattle (whether milked or dry cows);~~

~~(2) 300 to 999 veal calves;~~

~~(3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow-calf pairs;~~

~~(4) 750 to 2,499 swine (each weighing 55 pounds or more);~~

~~(5) 3,000 to 9,999 swine (each weighing less than 55 pounds);~~

~~(6) 150 to 499 horses;~~

~~(7) 3,000 to 9,999 sheep or lambs;~~

~~(8) 16,500 to 54,999 turkeys;~~

~~(9) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;~~

~~(10) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;~~

~~(11) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;~~

~~(12) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or~~

~~(13) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and~~

b. ~~Either one of the following conditions are met:~~

~~(1) Pollutants are discharged into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or~~

~~(2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.~~

~~The term "man-made" means constructed by man and used for the purpose of transporting wastes.~~

~~3. "Small CAFO." An AFO that is designated as a CAFO and is not a Medium CAFO.~~

~~"Director" means the Director of the Virginia Department of Environmental Quality, or his designee.~~

~~"Operator" means any owner or operator (individual, partnership, corporation, or association) of an AFO or CAFO in this state that is eligible to be certified under the provisions of this general permit.~~

~~"Permittee" means any operator (individual, partnership, corporation, or association) in the Commonwealth of Virginia that is certified to be covered under the provisions of this general permit.~~

~~"Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.~~

~~"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.~~

~~"Setback" means a specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to open tile line intake structures, sinkholes, and agricultural well heads.~~

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

~~"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.~~

~~**9VAC25-191-20. Purpose; delegation of authority; effective date of the permit. (Repealed.)**~~

~~A. This general permit regulation governs the pollutant management activities of animal wastes and process wastewater at concentrated animal feeding operations. These concentrated animal feeding operations may operate and maintain treatment works for waste storage,~~

~~treatment or recycling and may perform land application of manure, litter, process wastewater, compost, biosolids, or sludges.~~

~~B. The director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.~~

~~C. This general permit will become effective on January 1, 2006, and will expire five years from the effective date.~~

9VAC25-191-30. Authorization to discharge. (Repealed.)

~~A. Any owner or operator governed by this general permit is hereby authorized to discharge animal wastes and process wastewater at concentrated animal feeding operations to surface waters of the Commonwealth of Virginia provided that the owner submits a complete registration statement of 9VAC25-191-40 and receives notification of coverage by the board, and has complied with the following conditions:~~

~~1. The owner has not been required to obtain an individual permit according to 9VAC25-34;~~

~~2. The owner has complied or will comply with the effluent limitations and other requirements of 9VAC25-191-50;~~

~~3. The activities of the concentrated animal feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm, except that for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;~~

~~4. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be considered a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia; and~~

~~5. Adjoining property notification.~~

~~a. The owner shall give notice of the registration statement to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. Such notice shall include (i) the types and maximum number of animals that will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted. This notice requirement is waived whenever registration is for the purpose of renewing coverage under a permit and no expansion is proposed and the department has not issued any special or consent order relating to violations under the existing permit. This notice is also waived for poultry operations except those that propose construction of new poultry growing houses after December 1, 2000.~~

~~b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the~~

~~operation. Any such determination by the director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.~~

~~B. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies that prohibit such discharges.~~

~~C. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.~~

9VAC25-191-40. Registration statement. (Repealed.)

~~A. In order to be covered under the general permit, the owner shall file a complete VPDES Concentrated Animal Feeding Operation General Permit registration statement or a VPA Animal Feeding Operation General Permit registration statement. The registration statement submitted shall include the following information:~~

- ~~1. The name, location, and mailing address of the facility;~~
- ~~2. The latitude and longitude of the production area (entrance to production area);~~
- ~~3. The name, mailing address, and telephone number of the owner and operator;~~
- ~~4. The name and telephone number of a contact person other than the operator, if applicable;~~
- ~~5. The best time of day and day of the week to contact the operator or contact person;~~
- ~~6. If the facility has an existing VPA or VPDES permit, the permit number;~~
- ~~7. The method of mortality management;~~
- ~~8. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area;~~
- ~~9. Specific information about the maximum number, average weight of and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);~~
- ~~10. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);~~
- ~~11. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;~~
- ~~12. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and~~
- ~~13. Estimated amounts of poultry waste transferred to other persons per year (tons).~~

~~B. The applicant shall attach to the registration statement a copy of the facility's approved nutrient management plan and a letter from the Department of Conservation and Recreation certifying approval of the facility's nutrient management plan and if the nutrient management plan was written after December 31, 2005, that the facility's nutrient management plan was developed~~

by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

~~C. The registration statement shall include the following certification: "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the concentrated animal feeding operation will be located. This notice included the types and numbers of animals that will be maintained at the facility and the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to the permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under a permit and no expansion of the operation is proposed and the department has not issued any special or consent order relating to violations under the existing permit. This notice is also waived for poultry operations except those that propose construction of new poultry growing houses after December 1, 2000.) I certify under penalty of law that all the requirements of the board for the general permit are being met and that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."~~

~~D. Where to submit. The registration statement shall be submitted to the DEQ Regional Office that serves the area where the concentrated animal feeding operation is located.~~

9VAC25-191-50. Contents of the general permit. (Repealed.)

~~Any CAFO whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation, 9VAC25-31.~~

~~General Permit No.: VAG01
Effective Date: January 1, 2006
Expiration Date: December 31, 2010~~

~~GENERAL PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE
ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW~~

~~In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concentrated animal feeding operations are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies that prohibit such discharges.~~

~~The authorized discharge shall be in accordance with this cover page, Part I—Pollutant Management and Monitoring Requirements, Part II—Best Management Practices, Nutrient Management, and Special Conditions, and Part III—Conditions Applicable to All VPDES Permits, as set forth herein.~~

~~A. Pollutant management authorization. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.~~

~~B. Monitoring requirements.~~

1. ~~At earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, ground water monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires ground water monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.~~

2. ~~All facilities previously covered under a VPA permit that required ground water monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.~~

3. ~~At facilities where ground water monitoring is required, the following conditions apply:~~
- a. ~~One data set shall be collected from each well prior to any waste being placed in the storage facility.~~
 - b. ~~The static water level shall be measured prior to bailing well water for sampling.~~
 - c. ~~At least three well volumes of ground water shall be withdrawn immediately prior to sampling each monitoring well.~~

4. ~~In accordance with subdivisions 2 and 3 of this subsection, the ground water shall be monitored by the permittee at the monitoring wells as specified below. Additional ground water monitoring may be required in the facility's approved nutrient management plan.~~

GROUND WATER MONITORING

PARAMETER	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	umhos/cm	1/3 years	Grab

NL = No limit, this is a monitoring requirement only.

5. ~~Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.~~

SOILS MONITORING

PARAMETER	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite

Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

6. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise specified in the facility's approved nutrient management plan.

7. Waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium**	NL	*	1/year	Composite
Magnesium**	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

* Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

** Calcium and magnesium monitoring not required for poultry waste.

8. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

9. All monitoring data collected as required by this section and any additional monitoring data shall be maintained on-site for a period of five years and shall be made available to department personnel upon request.

Part II

Waste Storage Facility Design, Operation, and Maintenance; Recordkeeping and Reporting; Nutrient Management; Special Conditions

A. Waste storage facility design, operation and maintenance.

1. Any manure, litter, or process wastewater storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25 year, 24 hour storm; or for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100 year, 24 hour storm, and (ii) provide adequate waste storage capacity to

~~accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.~~

~~2. Waste storage facilities constructed after April 14, 2003, shall not be located on a 100-year floodplain, except that dry poultry waste storage facilities may be constructed on the 100-year floodplain, when the following conditions are met:~~

~~a. When the poultry operation has no land outside the floodplain on which to construct the facility; and~~

~~b. The facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.~~

~~New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.~~

~~3. Earthen liquid waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one-foot thickness with a maximum permeability rating of 0.0014 inches per hour. A licensed professional engineer, an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority, or an employee of a soil and water conservation district with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of this permit. This certification shall be maintained on site.~~

~~4. At earthen liquid waste storage facilities constructed below the seasonal high water table, the top surface of the waste shall be maintained at a level of at least two feet above the water table.~~

~~5. All liquid waste storage facilities shall maintain at least one foot of freeboard at all times, except in the case of a storm event greater than a 25-year, 24-hour storm. Liquid waste storage facilities at swine, poultry, and veal calf operations constructed after April 14, 2003, shall maintain at least one foot of freeboard at all times, except in the case of a storm event greater than a 100-year, 24-hour storm.~~

~~6. All equipment needed for the proper operation of the permitted facilities shall be maintained in good working order. The manufacturer's operating and maintenance manuals shall be retained for references to allow for timely maintenance and prompt repair of equipment when appropriate. The operator shall periodically inspect for leaks on equipment used for land application of manure, litter, or process wastewater.~~

~~7. All open surface liquid impoundments shall have a depth marker that clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event; or in the case of swine, poultry, and veal calf operations constructed after April 14, 2003, the runoff and direct precipitation from a 100-year, 24-hour rainfall event.~~

~~8. When any waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes or~~

~~eliminates, to the extent necessary to protect human health and the environment, the post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all waste from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual waste shall be removed from the surface below the stockpile when the waste is taken out of storage. Removed waste materials shall be utilized according to the nutrient management plan.~~

~~9. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Dry poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage.~~

~~Adequate storage shall, at a minimum, include the following:~~

- ~~a. Poultry waste shall be covered to protect it from precipitation and wind;~~
- ~~b. Storm water shall not run onto or under the stored poultry waste; and~~
- ~~c. A minimum of two feet separation distance shall be maintained to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All dry poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. Seasonal high water table means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1×10^{-6} centimeters per second).~~

~~10. Mortalities shall not be disposed of in any liquid manure or process wastewater system, and the permittee shall record methods of mortality management and practices used by the CAFO to prevent the discharge of pollutants to surface water. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be considered a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.~~

~~B. Recordkeeping and reporting.~~

- ~~1. The permittee shall maintain records documenting the following visual inspections:~~
 - ~~a. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channelling contaminated storm water to any wastewater or manure storage structure;~~
 - ~~b. Daily inspection of water lines, including drinking water or cooling water lines; and~~
 - ~~c. Weekly inspections of the manure, litter, and process wastewater storage structures; the inspection shall record the level in liquid impoundments as indicated by a depth marker.~~

~~The permittee shall also document any actions taken to correct deficiencies found during the visual inspections; deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing immediate correction;~~

~~2. The permittee shall maintain records documenting the current design of any manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;~~

~~3. The permittee shall maintain records of the date, time, and estimated volume of any overflow from a waste or process wastewater storage structure;~~

~~4. Records shall be maintained to demonstrate:~~

~~a. What fields under the ownership or operational control of the CAFO received waste;~~

~~b. At what rate waste has been applied;~~

~~c. That the application schedule has been followed;~~

~~d. The method used to apply the waste;~~

~~e. What crops have been planted;~~

~~f. The weather conditions at the time of application and for 24 hours prior to and following application;~~

~~g. What nutrients from sources other than manure, litter or process wastewater have been applied to each field; and~~

~~h. The date or dates of manure application equipment inspection.~~

~~These records shall be maintained on site for a period of five years after recorded application is made and shall be made available to department personnel upon request.~~

~~5. The permittee shall submit an annual report to the director by February 15 of each year for the previous calendar year or part thereof since covered by this general permit. The annual report shall include:~~

~~a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);~~

~~b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);~~

~~c. Estimated amount of poultry waste transferred to other persons by the CAFO in the previous 12 months (tons);~~

~~d. Total number of acres for land application covered by the facility's approved nutrient management plan;~~

~~e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;~~

~~f. Summary of all manure, litter and process wastewater discharges from the production area that entered or could be expected to enter state waters in the previous 12 months, including date, time, and approximate volume; and~~

~~g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.~~

~~6. The permittee shall create, maintain for five years, and make available to the director, upon request, any records that will document the implementation and management of the minimum elements described below:~~

- ~~a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;~~
- ~~b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;~~
- ~~c. Ensure that clean water is diverted, as appropriate, from the production area;~~
- ~~d. Prevent direct contact of confined animals with surface waters of the state;~~
- ~~e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;~~
- ~~f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;~~
- ~~g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;~~
- ~~h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.~~

~~C. Nutrient management.~~

~~1. All CAFO owners or operators shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation. All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The NMP shall be maintained on site. All NMPs developed for poultry operations shall be developed with respect to existing state law and regulation. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen loss to ground and surface waters. NMP's written after December 31, 2005, and NMP's implemented after December 31, 2006, shall also include provisions to minimize phosphorus loss to ground and surface waters according to the most current standards and criteria development by the Department of Conservation and Recreation at the time the plan is written. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:~~

- ~~a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied, unless exempted in Part II D;~~
- ~~b. Site evaluation and assessment of soil types and potential productivities;~~
- ~~c. Nutrient management sampling including soil and waste monitoring;~~
- ~~d. Storage and land area requirements;~~

- e. ~~Calculation of waste application rates;~~
- f. ~~Waste application schedules; and~~
- g. ~~A plan for waste utilization in the event the operation is discontinued.~~

2. ~~Buffer zones shall be maintained as follows:~~

- a. ~~Distance from occupied dwellings not on the owner's property—200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);~~
- b. ~~Distance from water supply wells or springs—100 feet;~~
- c. ~~Distance from surface water courses:~~
 - (1) ~~100 feet (without a vegetated buffer); or~~
 - (2) ~~35-foot wide vegetated buffer; or~~
 - (3) ~~Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer, or 35-foot wide vegetated buffer.~~
- d. ~~Distance from rock outcroppings (except limestone)—25 feet;~~
- e. ~~Distance from limestone outcroppings—50 feet;~~
- f. ~~Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.~~

D. ~~Special conditions.~~

1. ~~Poultry waste may be transferred from a permitted poultry grower to another person or broker without the requirement for the identification of fields where such waste will be applied in the facility's approved nutrient management plan if the following conditions are met:~~

- a. ~~When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person a copy of the most recent nutrient analysis for the poultry waste and a fact sheet approved by the department, in consultation with the Department of Conservation and Recreation, that includes appropriate practices for proper storage and management of the waste. The person or broker receiving the waste shall provide the poultry grower:~~
 - (1) ~~His name and address,~~
 - (2) ~~Written acknowledgement of receipt of the waste,~~
 - (3) ~~The nutrient analysis of the waste, and~~
 - (4) ~~The fact sheet.~~

~~If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end-user to whom he transfers poultry waste.~~

- b. ~~When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:~~
 - (1) ~~The amount of poultry waste received by the person,~~
 - (2) ~~The date of the transaction,~~

- ~~(3) The nutrient analysis of the waste;~~
- ~~(4) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);~~
- ~~(5) The name of the stream or waterbody known to the recipient that is nearest to the waste utilization site, and~~
- ~~(6) The signed waste transfer acknowledgement.~~

~~These records shall be maintained on site for five years after the transaction and shall be made available to department personnel upon request.~~

~~c. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.~~

~~2. The permittee shall notify the department's regional office at least 14 days prior to:~~

- ~~a. Animals being initially placed in the facility; or~~
- ~~b. Utilization of any new waste storage facilities.~~

~~3. Each operator of a facility covered by this general permit shall have completed the training program offered or approved by the Department of Conservation and Recreation in the two years prior to submitting the registration statement for general permit coverage, or shall complete such training within one year after submitting the registration statement for general permit coverage. All operators shall complete the training program at least once every three years.~~

~~Part III~~

~~Conditions Applicable to All VPDES Permits~~

~~A. Monitoring.~~

- ~~1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.~~
- ~~2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) 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 ensure accuracy of measurements.~~

~~B. Records.~~

- ~~1. Records of monitoring information shall include:~~
 - ~~a. The date, exact place, and time of sampling or measurements;~~
 - ~~b. The individual or individuals who performed the sampling or measurements;~~
 - ~~c. The dates analyses were performed;~~
 - ~~d. The individual or individuals 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 registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.~~

~~C. Reporting monitoring results.~~

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

~~2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.~~

~~3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.~~

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

~~D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board 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 III F or who discharges or causes or allows a discharge~~

that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long is it 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 III 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 that 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 that shall be reported within 24 hours under this subdivision:
 - a. Any unanticipated bypass; and
 - b. Any upset that causes a discharge to surface waters.
2. A written report shall be submitted within five 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 III 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 III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.~~

~~NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the department's regional office. Reports may be made by telephone or by 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 Management 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 § 306 of the Clean Water Act that are applicable to such source; or~~

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

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

~~c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit 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 that may result in noncompliance with permit requirements.~~

~~K. Signatory requirements.~~

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

~~a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit~~

~~duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure 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 subsection, 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 III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:~~

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

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

~~c. The written authorization is submitted to the department.~~

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

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

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

~~L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the 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 § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 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 submit a new registration statement at least 90 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 registration statements to be submitted later than the expiration date of the existing permit.~~

~~N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor 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, § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.~~

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

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

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

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

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

~~U. Bypass.~~

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

~~2. Notice.~~

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

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

~~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 that occurred during normal periods of equipment downtime or preventive maintenance; and~~

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

~~b. The board 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 III U 3~~

~~a.~~

~~V. Upset.~~

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

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

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

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

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

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

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

~~W. Inspection and entry. The permittee shall allow the director or an authorized representative, 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 subsection, 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 III 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 III Y 1, this permit may be automatically transferred to a new permittee if:~~

- ~~a. The current permittee notifies the department at least two 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 III Y 2 b.~~

~~Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any 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.~~

~~FORMS (9VAC25-191)(Repealed)~~

~~Virginia Pollutant Discharge Elimination General Permit Registration Statement for Concentrated Animal Feeding Operations, eff. 11/04.~~



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-191
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations
Action title	Repeal 9VAC25-191
Date this document prepared	04/20/2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The existing Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations Regulation (9VAC25-191) expired on December 31, 2010 and has not been re-issued. This general permit regulation does not allow the Board to provide the public notice opportunities as required by the Federal Concentrated Animal Feeding Operations (CAFO) Rule. CAFOs instead are now regulated under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). A VPDES individual permit is issued to livestock and poultry CAFOs that meet the discharge criteria; the individual permit process provides the public notice opportunities as required by the Federal CAFO Rule. This general permit regulation is no longer needed and is being repealed. A periodic review was conducted of this regulation in 2021 and the result of the periodic review was to repeal the regulation.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

AFO(s) - Animal Feeding Operation(s)
 CAFO(s) - Concentrated Animal Feeding Operation(s)
 VPA - Virginia Pollution Abatement
 VPDES - Virginia Pollutant Discharge Elimination System
 NPDES - National Pollutant Discharge Elimination System

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At its meeting on June 22, 2022, the State Water Control Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization also constituted its repeal of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal; and
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

A periodic review and small business impact review of the VPDES General Permit for Concentrated Animal Feeding Operations (9VAC25-191) was concluded in October 2021. The review of this regulation was guided by the principles in Executive Order No. 14 (2018) (as amended July 16, 2018), Development and Review of State Agency Regulations, and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia. The purpose of the periodic review was to determine if the regulation should be terminated, amended, or retained in its current form. A public comment period was held from August 2, 2021 through August 23, 2021. Comments were received from the Chesapeake Bay Foundation supporting the repeal of this regulation. The result of the periodic review was to repeal the regulation.

Repealing this regulation using the fast-track process will not be controversial because the general permit associated with this regulation is expired and no activities are currently covered by this regulation. CAFOs

are regulated under the VPDES Permit Regulation (9VAC25-31); an individual Permit is issued to cover livestock and poultry CAFOs that meet the discharge criteria. Animal Feeding Operations (AFOs) and CAFOs that do not discharge are also regulated under the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) and the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630). Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry AFOs and CAFOs.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15 (5) authorizes the issuance of permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15 (7) authorizes the Board to adopt rules governing the procedures with respect to the issuance of permits. Further, § 62.1-44.15 (10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15 (14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.17 specifies the Board's authority to regulate discharges of other wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

The State Water Control Board has the authority to administer the federal NPDES program within the Commonwealth, and as such, the program is called the VPDES program. Operations that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges. CAFOs are currently regulated in Virginia under the VPA permit regulation (9VAC25-32), the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192), the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630), and the VPDES Permit Regulation (9VAC25-31). CAFOs that discharge are required to obtain an individual VPDES permit under the authority of the VPDES Permit Regulation (9VAC25-31).

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Repealing this regulation will eliminate confusion as to the mechanism (individual permit versus general permit) that is being used to implement the requirements under the VPDES program that must be adhered to by owners of CAFOs that discharge. This general permit expired December 31, 2010 and has not been re-issued. This general permit regulation does not allow the Board to provide the public notice opportunities as required by the Federal CAFO Rule. CAFOs instead are now regulated under the VPDES Permit Regulation (9VAC25-31). A VPDES individual permit is issued to livestock and poultry CAFOs that meet the discharge criteria; the individual permit process provides the public notice opportunities as required by the Federal CAFO Rule. This general permit regulation is no longer needed and will be repealed.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The general permit regulation is no longer needed. CAFO and AFO activities are regulated using other regulations.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Repealing this regulation will only be advantageous to the public and to the Commonwealth because it will eliminate confusion as to the mechanism (individual permit versus general permit) that is being used to implement the requirements under the VPDES program that must be adhered to by owners of CAFOs that discharge.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The individual permit will contain all of the applicable federal and state requirements. Repealing this regulation will not cause the individual permits to be more restrictive than the requirements contained in the VPA or VPDES permit regulations that govern the CAFOs.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other State Agencies that are particularly affected by the repeal of this regulation.

Localities Particularly Affected

There are no localities that are particularly affected by the repeal of this regulation.

Other Entities Particularly Affected

There are no other Entities that are particularly affected by the repeal of this regulation.

For purposes of "Locality Particularly Affected" under the Board's statutes

There are no localities that are particularly affected by the repeal of this regulation.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are entities regulated by this general permit. There is no economic impact associated with the repeal of this regulation.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are entities regulated by this general permit. There is no economic impact associated with the repeal of this regulation.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Repealing this regulation will eliminate confusion as to the appropriate mechanism that is being used to implement the requirements that must be adhered to by owners of CAFOs under the VPDES program.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are entities regulated by this general permit. There is no economic impact associated with the repeal of this regulation.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Repealing this regulation will eliminate confusion as to the appropriate mechanism that is being used to implement the requirements that must be adhered to by owners of CAFOs under the VPDES program.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>There are entities regulated by this general permit.</p>
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<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>There are entities regulated by this general permit. There is no economic impact associated with the repeal of this regulation.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>The regulation is no longer needed and is being repealed. Public comment was received during the public comment period supporting the repeal of this regulation. The general permit associated with this regulation expired December 31, 2010. Continuing to list this regulation as an active regulation leads to confusion concerning regulatory requirements to be complied with.</p> <p>CAFOs that meet the discharge criteria are regulated under the VPDES Permit Regulation (9VAC25-31); an individual VPDES permit is issued to cover poultry and livestock CAFOs that meet the discharge criteria. AFOs and CAFOs that do not discharge are regulated under the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) and the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630). Both the VPA general permits and VPDES individual permits are currently used to permit livestock and poultry AFOs and CAFOs and do not conflict with federal laws.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Repealing this regulation will eliminate confusion as to the appropriate mechanism that is being used to implement the requirements that must be adhered to by owners of CAFOs under the VPDES program.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Currently, under the authority of the VPDES Permit Regulation (9VAC25-31) individual permits are being processed or have been issued to the owners of CAFOs that discharge. The general permit associated with this regulation is expired and no longer achieves the purpose of this regulation. This regulation will be repealed.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The Department could amend the general permit to allow for its reissuance; however, the process for obtaining coverage under the general permit does not allow for adequate public input into the process as required by the NPDES CAFO Rule. The current process of issuing an individual permit provides the opportunity for public comment before issuance of the permit as required by the federal regulations.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal and the potential impacts on the regulated community. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to **Betsy Bowles, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-659-1913, Fax: 804-698- 4178 and Betsy.Bowles@deq.virginia.gov**. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-191	N/A	Regulatory requirements for permit CAFOs under the VPDES general permit	Repeal: The regulation is being repealed since the general permit does not allow for adequate public input into the process as required by the Federal CAFO Rule.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Because CAFOs are currently regulated in Virginia and this action serves only to repeal the VPDES general permit regulatory mechanism governing select CAFOs; repealing this regulation is not expected to have significant impact on family or family stability.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178


www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

Memorandum

To: State Water Control Board Members

From: Angela Jenkins, Director of Policy Division 

Date: May 25, 2022

Subject: Chapter 356 of the 2022 Acts of Assembly

During its 2022 Regular Session, the General Assembly passed and the Governor signed into law Senate Bill 657 (Chapter 356 of the 2022 Acts of Assembly). This legislation relates to authorities of the State Air Pollution Control Board and the State Water Control Board. The legislation clarifies the responsibilities of the State Water Control Board and the Department of Environmental Quality in Chapters 3.1 (State Water Control Law), 8 (Impoundment of Surface Waters), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992) of Title 62.1 and provides that the Board's authority is with respect to the adoption of regulations. All other responsibility and authority, including the issuance of permits, rests with the Department. The provisions of this legislation will become effective July 1, 2022.

At your Board meetings scheduled for June 22, 2022 and August 25, 2022, the Department will request that the Board adopt amendments to regulations necessary to incorporate changes needed in response to Chapter 356 of the 2022 Acts of Assembly. I have attached a copy of Chapter 356 of the 2022 Acts of Assembly for your reference. (Note: State Water Control Board statutes begin on Page 11.)

Attachment: Chapter 356 of the 2022 Acts of Assembly

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 356

An Act to amend and reenact §§ 3.2-401, 10.1-1186.3, 10.1-1306 through 10.1-1307.02, 10.1-1307.04, 10.1-1308.1 through 10.1-1314, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1333, 15.2-2403.3, as it may become effective, 15.2-5101, 28.2-1205.1, 46.2-1601, 62.1-44.3, as it is currently effective and as it may become effective, 62.1-44.14, 62.1-44.15:81, 62.1-44.15:83, 62.1-104, 62.1-242, and 62.1-255 of the Code of Virginia; to amend the Code of Virginia by adding in Article 1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.6:1 and by adding sections numbered 62.1-248.2 and 62.1-263.1; and to repeal §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia, relating to Air Pollution Control Board and State Water Control Board; authority of Department of Environmental Quality.

[S 657]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-401, 10.1-1186.3, 10.1-1306 through 10.1-1307.02, 10.1-1307.04, 10.1-1308.1 through 10.1-1314, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1333, 15.2-2403.3, as it may become effective, 15.2-5101, 28.2-1205.1, 46.2-1601, 62.1-44.3, as it is currently effective and as it may become effective, 62.1-44.14, 62.1-44.15:81, 62.1-44.15:83, 62.1-104, 62.1-242, and 62.1-255 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.6:1 and by adding sections numbered 62.1-248.2 and 62.1-263.1 as follows:

§ 3.2-401. Exclusions from chapter.

This chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1; or (ii) a *water-related* permit issued by the ~~State Water Control Board~~, *Department of Environmental Quality* applies.

§ 10.1-1186.3. Additional powers of Boards and the Department; mediation; alternative dispute resolution.

A. The State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board, in their discretion, *or the Director, in his discretion*, may employ mediation as defined in § 8.01-581.21, or a dispute resolution proceeding as defined in § 8.01-576.4, in appropriate cases to resolve underlying issues, reach a consensus, or compromise on contested issues. An "appropriate case" means any process related to the development of a regulation by the *Board* or the issuance of a permit by the *Department* in which it is apparent that there are significant issues of disagreement among interested persons and for which the *Board or the Department* finds that the use of a mediation or dispute resolution proceeding is in the public interest. The *Boards or the Department* shall consider not using a mediation or dispute resolution proceeding if:

1. A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

2. The matter involves or may bear upon significant questions of state policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the ~~Board~~ *Department*;

3. Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

4. The matter significantly affects persons or organizations who are not parties to the proceeding;

5. A full public record of the proceeding is important, and a mediation or dispute resolution proceeding cannot provide such a record; and

6. The *Board or the Department* must maintain continuing jurisdiction over the matter with the authority to alter the disposition of the matter in light of changed circumstances, and a mediation or dispute resolution proceeding would interfere with the *Department or the Board's* fulfilling that requirement.

Mediation and alternative dispute resolution as authorized by this section are voluntary procedures which supplement rather than limit other dispute resolution techniques available to the *Boards or the Department*. Mediation or a dispute resolution proceeding may be employed in the issuance of a permit only with the consent and participation of the permit applicant and shall be terminated at the request of the permit applicant.

B. The decision to employ mediation or a dispute resolution proceeding is in a *Board's or the Department's* sole discretion and is not subject to judicial review.

C. The outcome of any mediation or dispute resolution proceeding shall not be binding upon a Board

or the Department, but may be considered by a Board the Department in issuing a permit or by a Board in promulgating a regulation.

D. Each Board and the Department shall adopt rules and regulations, in accordance with the Administrative Process Act, for the implementation of this section. Such rules and regulations shall include: (i) standards and procedures for the conduct of mediation and dispute resolution, including an opportunity for interested persons identified by the Board Department to participate in the proceeding; (ii) the appointment and function of a neutral, as defined in § 8.01-576.4, to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work product or other materials.

E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where the Department or a Board uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation, respectively.

Nothing in this section shall create or alter any right, action or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), with applicable federal law or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

§ 10.1-1306. Inspections, investigations, etc.

The Board Department shall make, or cause to be made, such investigations and inspections and do such other things as are reasonably necessary to carry out the provisions of this chapter, within the limits of the appropriations, study grants, funds, or personnel which are available for the purposes of this chapter, including the achievement and maintenance of such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property and which will foster the comfort and convenience of the people of the Commonwealth and their enjoyment of life and property and which will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions.

§ 10.1-1307. Further powers and duties of Board and Department.

A. The Board shall have the power to control and regulate its internal affairs; *The Department shall have the power to initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.*

B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in § 10.1-1307.05 and Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, ~~it~~ *the Department may in its discretion grant local variances therefrom, if it finds after an investigation and hearing that local conditions warrant; except that no local variances shall be granted from regulations adopted by the Board pursuant to § 10.1-1308 related to the requirements of subsection E of § 10.1-1308 or Article 4 (§ 10.1-1329 et seq.).* If local variances are permitted, the Board Department shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Board Department, after a hearing, determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

D. After the Board has adopted the regulations provided for in § 10.1-1308, ~~it~~ *the Department shall have the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce its the Board's regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of its orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.*

E. The Board in making regulations and; *the Department in approving variances, control programs, or permits; and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:*

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located, *except that consideration of this factor shall be satisfied if the local governing body of a locality in which a facility or activity is*

proposed has resolved that the location and operation of the proposed facility or activity is suitable to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. The Board may designate one of its members, the Director, or a staff assistant to Department shall conduct the hearings provided for in this chapter. A record of the hearing shall be made and furnished to the Board for its use in arriving at its decision.

G. The Board shall not:

1. Adopt any regulation limiting emissions from wood heaters; or

2. Enforce against a manufacturer, distributor, or consumer any federal regulation limiting emissions from wood heaters adopted after May 1, 2014.

H. The Board Department shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on the status of the Commonwealth's air quality.

I. In granting a permit pursuant to this section, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit, pursuant to this section, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

§ 10.1-1307.01. Further duties of Board and Department; localities particularly affected.

A. Before The Board, before promulgating a regulation under consideration, or the Department, before granting a variance to an existing regulation, or issuing a permit for the construction of a new major source or for a major modification to an existing source, if the Board finds it is found that there is a locality particularly affected by the regulation, variance, or permit, the Board shall, respectively:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in each locality affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall provide information regarding specific pollutants and the total quantity of each that may be emitted and shall list the type and quantity of any fuels to be used.

2. Mail the notice to the chief elected official and chief administrative officer of and the planning district commission for such locality.

Written comments shall be accepted by the Board for at least 15 days after any hearing on the regulation, variance, or permit, unless the Board votes to shorten the period. *Written comments shall be accepted by the Department for at least 15 days after any hearing on the variance or permit.*

B. Before If the Department finds, before granting any variance to an existing regulation or issuing any permit for (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas, if the Board finds that there is a locality particularly affected by such variance or permit, the Board Department shall:

1. Require the applicant to publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public how to request Board consideration or as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The Department shall post such notice on the Department website and on a Department social media account.

2. Require the applicant to mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality.

Written comments shall be accepted by the Board Department for at least 30 days after any hearing on such variance or permit, unless the Board votes Director elects to shorten the period.

C. For the purposes of this section, the term "locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

§ 10.1-1307.02. Permit for generation of electricity during ISO-declared emergency.

A. As used in this section:

"Emergency generation source" means a stationary internal combustion engine that operates according

to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.

"ISO-declared emergency" means a condition that exists when the independent system operator, as defined in § 56-576, notifies electric utilities that an emergency exists or may occur and that complies with the definition of "emergency" adopted by the Board pursuant to subsection B.

"Retail customer" has the same meaning ascribed thereto in § 56-576.

B. The Board shall adopt a general permit ~~or permits regulation~~ for the use of back-up generation to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during ISO-declared emergencies. Such general permit ~~or permits regulation~~ shall include a definition of "emergency" that is compatible with the ISO's emergency operations manual. After adoption of such general permit ~~or permits regulation~~, any amendments to the Board's regulations necessary to carry out the provisions of this section shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

§ 10.1-1307.04. Greenhouse gas emissions inventory.

A. The Department shall conduct a comprehensive statewide baseline and projection inventory of all greenhouse gas (GHG) emissions and shall update such inventory every four years. The Board may adopt regulations necessary to collect from all source sectors data needed by the Department to conduct, update, and maintain such inventory.

B. The ~~Board~~ Department shall include the inventory in the report required pursuant to subsection H of § 10.1-1307, beginning with the report issued prior to October 1, 2022, and every four years thereafter. The Department shall publish such inventory on its website, showing changes in GHG emissions relative to an estimated GHG emissions baseline case for calendar year 2010.

C. Any information, except emissions data, that is reported to or otherwise obtained by the Department pursuant to this section and that contains or might reveal proprietary information shall be confidential and shall be exempt from the mandatory disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Each owner shall notify the Director or his representative of the existence of proprietary information if he desires the protection provided pursuant to this subsection.

§ 10.1-1308.1. Streamlined permitting process for qualified energy generators.

A. As used in this section:

"Biomass" means organic material that is available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;
2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;
3. Animal waste, including manure and slaughterhouse and other processing waste;
4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;
5. Crops and trees planted for the purpose of being used to produce energy;
6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and
7. Municipal solid waste, excluding tires and medical and hazardous waste.

"Expedited process" means a process that (i) requires the applicant to pay fees to the Commonwealth in connection with the issuance and processing of the permit application that do not exceed \$50 and (ii) has a duration, from receipt of a complete permit application until final action by the ~~Board~~ or Department on the application, not longer than 60 days.

"Qualified energy generator" means a commercial facility located in the Commonwealth with the capacity annually to generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product, that is generated or produced from biomass, and that is sold to an unrelated person or used in a manufacturing process.

B. The ~~Board~~ Department shall develop an expedited process for issuing any permit that ~~the Board~~ it is required to issue for the construction or operation of a qualified energy generator. The development of the expedited permitting process shall be in accordance with subdivision A 8 of § 2.2-4006; however, if the construction or operation of a qualified energy generator is subject to a major new source review program required by § 110(a)(2)(C) of the federal Clean Air Act, this section shall not apply.

§ 10.1-1309. Issuance of special orders; civil penalties.

A. The ~~Board~~ Department shall have the power to issue special orders to:

- (i) owners who are permitting or causing air pollution as defined by § 10.1-1300, to cease and desist from such pollution;
- (ii) owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to and approved by the ~~Board~~ Department, to construct such facilities in accordance with or otherwise comply with, such approved plans;
- (iii) owners who have violated or failed to comply with the terms and provisions of any ~~Board~~

Department order or directive to comply with such terms and provisions;

(iv) owners who have contravened duly adopted and promulgated air quality standards and policies, to cease such contravention and to comply with air quality standards and policies;

(v) require any owner to comply with the provisions of this chapter and any *Board Department* decision; and

(vi) require any person to pay civil penalties of up to \$32,500 for each violation, not to exceed \$100,000 per order, if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the *Board* or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subsection B. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The *Board Department* shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination.

B. Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C below. Should the *Board Department* find that any such owner is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, after a reasonable attempt to give notice, it shall declare a state of emergency and may issue without hearing an emergency special order directing the owner to cease such pollution immediately, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the *Board Department* finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 10.1-1316 or 10.1-1320.

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the *Board Department*, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § 10.1-1307 shall limit the *Board's Department's* authority to proceed against such owner directly under § 10.1-1316 or 10.1-1320 without the prior issuance of an order, special or otherwise.

§ 10.1-1309.1. Special orders; penalties.

The *Board Department* is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the *Board Department* a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Department, submission of a bond, corporate guarantee based on audited financial statements, or such other instruments as the *Board Department* may deem appropriate. The *Board Department* may require that such plan and instruments be updated as appropriate. The *Board Department* shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1410, 10.1-1428, and 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a source which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the source. The term shall not include the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1310. Decision of Department pursuant to hearing.

Any decision by the *Board Department* rendered pursuant to hearings under § 10.1-1309 shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the *Board's Department's* decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

§ 10.1-1310.1. Notification of local government.

Upon determining that there has been a violation of this chapter or any regulation promulgated under this chapter or order of the *Board Department*, and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

§ 10.1-1311. Penalties for noncompliance; judicial review.

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Upon a determination of the amount by the *Board Department*, the *Board Department* shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter.

§ 10.1-1312. Air pollution control districts.

A. The *Board Department* may create, within any area of the Commonwealth, local air pollution control districts comprising a city or county or a part or parts of each, or two or more cities or counties, or any combination or parts thereof. Such local districts may be established by the *Board Department* on its own motion or upon request of the governing body or bodies of the area involved.

B. In each district there shall be a local air pollution control committee, the members of which shall be appointed by the *Board Department* from lists of recommended nominees submitted by the respective governing bodies of each locality, all or a portion of which are included in the district. The number of members on each committee shall be in the discretion of the *Board Department*. When a district includes two or more localities or portions thereof, the *Board Department* shall apportion the membership of the committee among the localities, provided that each locality shall have at least one representative on the committee. The members shall not be compensated out of state funds, but may be reimbursed for expenses out of state funds. Localities may provide for the payment of compensation and reimbursement of expenses to the members and may appropriate funds therefore. The portion of such payment to be borne by each locality shall be prescribed by agreement.

C. The local committee is empowered to observe compliance with the regulations of the Board and report instances of noncompliance to the *Board Department*, to conduct educational programs relating to air pollution and its effects, to assist the Department in its air monitoring programs, to initiate and make studies relating to air pollution and its effects, and to make recommendations to the *Board Department*.

D. The governing body of any locality, wholly or partially included within any such district, may appropriate funds for use by the local committee in air pollution control and studies.

§ 10.1-1313. State Advisory Board on Air Pollution.

The *Board Department* is authorized to name qualified persons to a State Advisory Board on Air Pollution.

§ 10.1-1314. Owners to furnish plans, specifications and information.

Every owner which the *Board Department* has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the *Board Department* furnish such plans, specifications and information as may be required by the *Board Department* in the discharge of its duties under this chapter. Any information, except emission data, as to secret processes, formulae or

methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

§ 10.1-1315. Right of entry.

Whenever it is necessary for the purposes of this chapter, the *Board Department* or any member, agent or employee thereof, when duly authorized by the *Board Director*, may at reasonable times enter any establishment or upon any property, public or private, to obtain information or conduct surveys or investigations.

§ 10.1-1316. Enforcement and civil penalties.

A. Any owner violating or failing, neglecting or refusing to obey any provision of this chapter, any Board regulation or *Department* order, or any permit condition may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under subsection A, any owner violating or failing, neglecting or refusing to obey any Board regulation or *Department* order, any provision of this chapter, or any permit condition shall be subject, in the discretion of the court, to a civil penalty not to exceed \$32,500 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any Board regulation or *Department* order, or any provision of this chapter, or any permit condition, the *Board Department* may provide, in any order issued by the *Board Department* against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

D. The *Board Department* shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

§ 10.1-1318. Appeal from decision of Department.

A. Any owner aggrieved by a final decision of the *Board Department* under § 10.1-1309, § 10.1-1322 or subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the *Board Department* under § 10.1-1322 and who has exhausted all available administrative remedies for review of the *Board's Department's* decision, shall be entitled to judicial review of the *Board's Department's* decision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

§ 10.1-1320. Penalties; chapter not to affect right to relief or to maintain action.

Any owner knowingly violating any provision of this chapter, Board regulation, or *Department* order, or any permit condition shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than \$10,000 for each violation within the discretion of the court. Each day of violation shall constitute a separate offense.

Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

§ 10.1-1320.1. Duty of attorney for the Commonwealth.

It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized

representative has reported any violation of (i) this chapter or, (ii) any regulation of the Board, or (iii) order of the Board Department, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

§ 10.1-1322. Permits.

A. Pursuant to regulations adopted by the Board and subject to ~~§ 10.1-1322.01~~, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations of the Board and orders of the Board Department under the provisions of this chapter. To the extent allowed by federal law, any person holding a permit who is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, will reduce the emissions of regulated air pollutants, and meets the requirements of Best Available Control Technology shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subsection to the Department no later than 30 days prior to commencing construction.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the Board's operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of \$25 per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The Board shall also ~~collect~~ promulgate regulations establishing permit application fee amounts not to exceed \$30,000 from applicants for a permit for a new major stationary source. The permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On or before January 1 of every even-numbered year, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs that may be required by the federal government and administered by the Board Department, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

I. [Expired.]

§ 10.1-1322.4. Permit modifications for alternative fuels or raw materials.

Unless required by federal law or regulation, no additional permit or permit modifications shall be required by the Board for the use, by any source, of an alternative fuel or raw material, if the owner demonstrates to the Board that as a result of trial burns at his facility or other facilities or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased. To the extent allowed by federal law or regulation, no demonstration shall be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture

thereof in place of the same quantity of residual oil to fire industrial boilers.

§ 10.1-1333. Permitting process for clean coal projects.

To the extent authorized by federal law, the ~~Board~~ *Department of Environmental Quality* shall implement permit processes that facilitate the construction of clean coal projects in the Commonwealth by, among such other actions as it deems appropriate, giving priority to processing permit applications for clean coal projects.

§ 15.2-2403.3. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Stormwater service districts; allocation of revenues.

Any town located within a stormwater service district created pursuant to this chapter shall be entitled to any revenues collected within the town pursuant to subdivision 6 of § 15.2-2403, subject to the limitations set forth therein, so long as the town maintains its own municipal separate storm sewer system (MS4) permit issued by the ~~State Water Control Board~~ *Department of Environmental Quality* or maintains its own stormwater service district.

§ 15.2-5101. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means an authority created under the provisions of § 15.2-5102 or Article 6 (§ 15.2-5152 et seq.) of this chapter or, if any such authority has been abolished, the entity succeeding to the principal functions thereof.

"Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of an authority for the payment of money.

"Cost," as applied to a system, includes the purchase price of the system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in the authority; the cost of improvements; the cost of all land, properties, rights, easements, franchises and permits acquired; the cost of all labor, machinery and equipment; financing and credit enhancement charges; interest prior to and during construction and for one year after completion of construction; any deposit to any bond interest and principal reserve account, start-up costs and reserves and expenditures for operating capital; cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues; other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvement, or construction; administrative expenses and such other expenses as may be necessary or incident to the financing authorized in this chapter and to the acquisition, improvement, or construction of any such system and the placing of the system in operation by the authority. Any obligation or expense incurred by an authority in connection with any of the foregoing items of cost and any obligation or expense incurred by the authority prior to the issuance of revenue bonds under the provisions of this chapter for engineering studies, for estimates of cost and revenues, and for other technical or professional services which may be utilized in the acquisition, improvement or construction of such system is a part of the cost of such system.

"Cost of improvements" means the cost of constructing improvements and includes the cost of all labor and material; the cost of all land, property, rights, easements, franchises, and permits acquired which are deemed necessary for such construction; interest during any period of disuse during such construction; the cost of all machinery and equipment; financing charges; cost of engineering and legal expenses, plans, specifications; and such other expenses as may be necessary or incident to such construction.

"Federal agency" means the United States of America or any department, agency, instrumentality, or bureau thereof.

"Green roof" means a roof or partially covered roof consisting of plants, soil, or another lightweight growing medium that is installed on top of a waterproof membrane and designed in accordance with the Virginia Stormwater Management Program's standards and specifications for green roofs, as set forth in the Virginia BMP Clearinghouse.

"Improvements" means such repairs, replacements, additions, extensions and betterments of and to a system as an authority deems necessary to place or maintain the system in proper condition for the safe, efficient and economical operation thereof or to provide service in areas not currently receiving such service.

"Owner" includes persons, federal agencies, and units of the Commonwealth having any title or interest in any system, or the services or facilities to be rendered thereby.

"Political subdivision" means a locality or any institution or commission of the Commonwealth of Virginia.

"Refuse" means solid waste, including sludge and other discarded material, such as solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations or from community activities or residences. "Refuse" does not include (i) solid and dissolved materials in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the ~~State Water Control Board~~ *Department of Environmental Quality*, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954 (42 U.S.C. § 2011, et seq.), as amended.

"Refuse collection and disposal system" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from refuse and the land, structures, vehicles and equipment for use in connection therewith.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water and household and industrial wastes as may be present.

"Sewage disposal system" means any system, plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

"Sewer system" or "sewage system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial wastes or other wastes to a plant of ultimate disposal.

"Stormwater control system" means a structural system of any type that is designed to manage the runoff from land development projects or natural systems designated for such purposes, including, without limitation, retention basins, ponds, wetlands, sewers, conduits, pipelines, pumping and ventilating stations, and other plants, structures, and real and personal property used for support of the system.

"System" means any sewage disposal system, sewer system, stormwater control system, water or waste system, and for authorities created under Article 6 (§ 15.2-5152 et seq.) of this chapter, such facilities as may be provided by the authority under § 15.2-5158.

"Unit" means any department, institution or commission of the Commonwealth; any public corporate instrumentality thereof; any district; or any locality.

"Water or waste system" means any water system, sewer system, sewage disposal system, or refuse collection and disposal system, or any combination of such systems. "Water system" means all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, or facilities incident thereto, and any integral part thereof, including water supply systems, water distribution systems, dams and facilities for the generation or transmission of hydroelectric power, reservoirs, wells, intakes, mains, laterals, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances, and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof but not including dams or facilities for the generation or transmission of hydroelectric power that are not incident to plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water.

§ 28.2-1205.1. Coordinated review of water resources projects.

A. Applications for water resources projects that require a Virginia Marine Resources permit and an individual Virginia Water Protection Permit under § 62.1-44.15:20 shall be submitted and processed through a joint application and review process.

B. The Commissioner and the Director of the Department of Environmental Quality, in consultation with the Virginia Institute of Marine Science, the Department of Wildlife Resources, the Department of Historic Resources, the Department of Health, the Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring both permits.

C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the initial application for the project shall be advertised simultaneously by the Commission and the Department of Environmental Quality; (ii) project reviews shall be completed by all state agencies that have been asked to review and provide comments, within 45 days of project notification by the Commission and the Department of Environmental Quality; (iii) the Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* shall coordinate permit issuance and, to the extent practicable, shall take action on the permit application no later than one year after the agencies have received complete applications; (iv) to the extent practicable, the Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* shall provide each other with notification of its action and any and all supporting information, including any background materials or exhibits used in the application.

§ 46.2-1601. Licensing of dealers of salvage vehicles; fees.

A. It shall be unlawful for any person to engage in business in the Commonwealth as an auto recycler, salvage pool, or vehicle removal operator without first acquiring a license issued by the Commissioner for each such business at each location. The fee for the first such license issued or renewed under this chapter shall be \$100 per license year or part thereof. The fee for each additional license issued or renewed under this chapter for the same location shall be \$25 per license year or part

thereof. However, no fee shall be charged for supplemental locations of a business located within 500 yards of the licensed location.

B. No license shall be issued or renewed for any person unless (i) the licensed business contains at least 600 square feet of enclosed space, (ii) the licensed business is shown to be in compliance with all applicable zoning ordinances, and (iii) the applicant may (a) certify to the Commissioner that the licensed business is permitted under a Virginia Pollutant Discharge Elimination System individual or general permit issued by the ~~State Water Control Board~~ *Department of Environmental Quality* for discharges of storm water associated with industrial activity and provides the permit number(s) from such permit(s) or (b) certify to the Commissioner that the licensed business is otherwise exempt from such permitting requirements. Nothing in this section shall authorize any person to act as a motor vehicle dealer or salesperson without being licensed under Chapter 15 (§ 46.2-1500 et seq.) and meeting all requirements imposed by such chapter.

C. Licenses issued under this section shall be deemed not to have expired if the renewal application and required fees as set forth in subsection A are received by the Commissioner or postmarked not more than 30 days after the expiration date of such license. Whenever the renewal application is received by the Commissioner or postmarked not more than 30 days after the expiration date of such license, the license fees shall be 150 percent of the fees provided for in subsection A.

D. The Commissioner may offer an optional multiyear license for any license set forth in this section. When such option is offered and chosen by the licensee, all fees due at the time of licensing shall be multiplied by the number of years for which the license will be issued.

§ 62.1-44.3. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) **Definitions.**

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

"Certificate" means any certificate issued by the ~~Board~~ *Department*.

"Department" means the Department of Environmental Quality.

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

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources.

"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

"Member" means a member of the Board.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any state waters.

"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.

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

"Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations 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 standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.

"Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"Regulation" means a regulation issued under § 62.1-44.15 (10).

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to § 62.1-44.15 (7).

"Ruling" means a ruling issued under § 62.1-44.15 (9).

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

"Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"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.

§ 62.1-44.3. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345)
Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream

beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

"Certificate" means any certificate or permit issued by the ~~Board~~ Department.

"Department" means the Department of Environmental Quality.

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

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by (i) a Virginia Erosion and Stormwater Management Program authority after the requirements of § 62.1-44.15:34 have been met or (ii) a Virginia Erosion and Sediment Control Program authority after the requirements of § 62.1-44.15:55 have been met.

"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

"Member" means a member of the Board.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

1. Owned or operated by a federal entity, 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, stormwater, or other wastes, including a special district under state law such as a sewer district, flood control district, drainage district or similar entity, or a designated and approved management agency under § 208 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. Not a combined sewer; and

4. Not part of a publicly owned treatment works.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any state waters.

"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.

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

"Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not

sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations 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 standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.

"Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"Regulation" means a regulation issued under subdivision (10) of § 62.1-44.15.

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to subdivision (7) of § 62.1-44.15.

"Ruling" means a ruling issued under subdivision (9) of § 62.1-44.15.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

"Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"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.

§ 62.1-44.6:1. Permit rationale.

In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget preparation.

The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.2-106. The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter except the adoption and promulgation of standards, rules and regulations; and the revocation of certificates. The Executive Director is authorized to issue, modify or revoke orders in cases of emergency as described in §§ 62.1-44.15 (8b) and 62.1-44.34:20 of this chapter. The Executive Director is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

It shall be the duty of the Executive Director to exercise general supervision and control over the quality and management of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board.

The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations. The Executive Director shall be vested with all the authority of the Board when it is not in session, except for the Board's authority to consider permits pursuant to § 62.1-44.15:02 and to issue special orders pursuant to subdivisions (8a) and (8b) of § 62.1-44.15 and subject to such regulations as may be prescribed by the Board. In no event shall the Executive Director have the authority to adopt or promulgate any regulation.

§ 62.1-44.15:81. Application and preparation of draft certification conditions.

A. Any applicant for a federal license or permit for a natural gas transmission pipeline greater than 36 inches inside diameter subject to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) shall submit a separate application, at the same time the Joint Permit Application is submitted, to the Department containing a description of all activities that will occur in upland areas, including activities in or related to (i) slopes with a grade greater than 15 percent; (ii) karst geology features, including sinkholes and underground springs; (iii) proximity to sensitive streams and wetlands identified by the Department of Conservation and Recreation or the Department of Wildlife Resources; (iv) seasonally high water tables; (v) water impoundment structures and reservoirs; and (vi) areas with highly erodible soils, low pH, and acid sulfate soils. Concurrently with the Joint Permit Application, the applicant shall also submit a detailed erosion and sediment control plan and stormwater management plan subject to Department review and approval.

B. After receipt of an application in accordance with subsection A, the Department shall issue a request for information about how the erosion and sediment control plan and stormwater management plan will address activities in or related to the upland areas identified in subsection A. The response to such request shall include the specific strategies and best management practices that will be utilized by the applicant to address challenges associated with each area type and an explanation of how such strategies and best management practices will ensure compliance with water quality standards.

C. At any time during the review of the application, but prior to issuing a certification pursuant to this article, the Department may issue an information request to the applicant for any relevant additional information necessary to determine (i) if any activities related to the applicant's project in upland areas are likely to result in a discharge to state waters and (ii) how the applicant proposes to minimize water quality impacts to the maximum extent practicable to protect water quality. The information request shall provide a reasonable amount of time for the applicant to respond.

D. The Department shall review the information contained in the application, the response to the information request in subsection B, and any additional information obtained through any information requests issued pursuant to subsection C to determine if any activities described in the application or in any additional information requests (i) are likely to result in a discharge to state waters with the potential to adversely impact water quality and (ii) will not be addressed by the Virginia Water Protection Permit issued for the activity pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.). The Department of Wildlife Resources, the Department of Conservation and Recreation, the Department of Health, and the Department of Agriculture and Consumer Services shall consult with the Department during the review of the application and any additional information obtained through any information requests issued pursuant to subsection B or C. Following the conclusion of its review, the Department shall develop a draft certification or denial. A draft certification, including (i) any additional conditions for activities in upland areas necessary to protect water quality and (ii) a condition that the applicant shall not commence land-disturbing activity prior to approval by the Department of the erosion and sediment control plan and stormwater management plan required pursuant to subsection E, shall be noticed for public comment and potential issuance by the Department or the Board pursuant to § 62.1-44.15:02. The Department shall make the information contained in the application and any additional information obtained through any information requests issued pursuant to subsection B or C available to the public.

E. Notwithstanding any applicable annual standards and specifications for erosion and sediment control or stormwater management pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.), the applicant shall not commence land-disturbing activity prior to resolution of any unresolved issues identified in subsection B to the satisfaction of the Department and approval by the Department of an erosion and sediment control plan and stormwater management plan in accordance with applicable regulations. The Department shall act on any plan submittal within 60 days after initial submittal of a completed plan to the Department. The Department may issue either approval or disapproval and shall provide written rationale for its decision. The Department shall act on any plan that has been previously disapproved within 30 days after the plan has been revised and resubmitted for approval.

F. No action by either the Department or the Board on a certification pursuant to this article shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval.

G. The Department shall assess an administrative charge to the applicant to cover the direct costs of services rendered associated with its responsibilities pursuant to this section.

H. Neither the Department nor the Board shall expressly waive certification of a natural gas

transmission pipeline of greater than 36 inches inside diameter under § 401 of the federal Clean Water Act (33 U.S.C. § 1341). The Department or the Board shall act on any certification request within a reasonable period of time pursuant to federal law. Nothing in this section shall be construed to prohibit the Department or the Board from taking action to deny a certification in accordance with the provisions of § 401 of the federal Clean Water Act (33 U.S.C. § 1341).

§ 62.1-44.15:83. Requests for public hearing, hearings, and final decisions procedures.

A. The issuance of a certification pursuant to this article shall be a permit action for purposes of § 62.1-44.15:02.

B. The Department shall assess an administrative charge to the applicant to cover the direct costs of services rendered associated with its responsibilities pursuant to this section.

§ 62.1-104. Definitions.

(1) Except as modified below, the definitions contained in Title 1 shall apply in this chapter.

(2) "Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

(3) "Impounding structure" means a man-made device, whether a dam across a watercourse or other structure outside a watercourse, used or to be used for the authorized storage of flood waters for subsequent beneficial use.

(4) "Watercourse" means a natural channel having a well-defined bed and banks and in which water flows when it normally does flow. For the purposes hereof they shall be limited to rivers, creeks, streams, branches, and other watercourses which are nonnavigable in fact and which are wholly within the jurisdiction of the Commonwealth.

(5) "Riparian land" is land which is contiguous to and touches a watercourse. It does not include land outside the watershed of the watercourse. Real property under common ownership and which is not separated from riparian land by land of any other ownership shall likewise be deemed riparian land, notwithstanding that such real property is divided into tracts and parcels which may not bound upon the watercourse.

(6) "Riparian owner" is an owner of riparian land.

(7) "Average flow" means the average discharge of a stream at a particular point and normally is expressed in cubic feet per second. It may be determined from actual measurements or computed from the most accurate information available.

(8) "Diffused surface waters" are those which, resulting from precipitation, flow down across the surface of the land until they reach a watercourse, after which they become parts of streams.

(9) "Floodwaters" means water in a stream which is over and above the average flow.

(10) "Court" means the circuit court of the county or city in which an impoundment is located or proposed to be located.

§ 62.1-242. Definitions.

As used in this chapter, unless the context requires otherwise:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Surface water withdrawal permit" means a document issued by the Board evidencing the right to withdraw surface water.

"Surface water management area" means a geographically defined surface water area in which the Board has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

"Surface water" means any water in the Commonwealth, except ground water, as defined in § 62.1-255.

§ 62.1-248.2. Permit rationale.

In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by

certified mail to the permittee or applicant.

§ 62.1-255. Definitions.

As used in this chapter, unless the context requires otherwise:

"Agricultural irrigation" means irrigation that is used to support any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silvicultural activity.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

"Department" means the Department of Environmental Quality.

"Eastern Shore Groundwater Management Area" means the ground water management area declared by the Board encompassing the Counties of Accomack and Northampton.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of the Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Irrigation" means the controlled application of water through man-made systems to supply water requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

"Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of the Commonwealth or any other state or country.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 62.1-263.1. Permit rationale.

In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

2. That §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia are repealed.

3. That any permits or orders issued by the Air Pollution Control Board or the State Water Control Board prior to the effective date of this act shall continue in full force and are enforceable by the Department of Environmental Quality.

4. That nothing in this act shall be construed to limit or impact § 3.2-301 or 15.2-2288.6 of the Code of Virginia.

5. That at each regular meeting of the Air Pollution Control Board and the State Water Control Board (the Boards), the Department of Environmental Quality (the Department) shall provide an overview and update regarding any controversial permits pending before the Department that are relevant to each board. Immediately after such presentation by the Department, the Boards shall have an opportunity to respond to the Department's presentation and provide commentary regarding such pending permits. Before rendering a final decision on a controversial permit, the Department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the Department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the Department's public comment summary and response. No new information will be accepted at that time.

For purposes of this enactment, "controversial permit" means an air or water permitting action for which a public hearing has been granted pursuant to the provisions of the sixth enactment of this act. "Controversial permit" also means an air permitting action where a public hearing is required for (i) the construction of a new major source or for a major modification to an existing source, (ii) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iv) a new fossil fuel-fired compressor station facility used to transport natural gas, or (v) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas.

6. That any changes to regulations necessary to implement the provisions of this act shall include the following criteria for requesting and granting a public hearing on a permit action during a public comment period in those instances where a public hearing is not mandatory under state or federal law or regulation. During the public comment period on permit action, interested persons may request a public hearing to contest such action or the terms and conditions thereof. Requests for a public hearing shall contain the following information: (i) the name and postal mailing or email address of the requester; (ii) the names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, "person" includes an unincorporated association); (iii) the reason for the request for a public hearing; (iv) a brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and (v) where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Air Pollution Control Board or the State Water Control Board, as applicable. Upon completion of the public comment period on a permit action, the Director of the Department of Environmental Quality shall review all timely requests for public hearing filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the Director finds the following: (a) that there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing; (b) that the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and (c) that the action requested by the interested party is not on its face inconsistent with, or in violation of, the basic laws of the State Air Pollution Control Board if the permit action is an air permit action, or the basic laws of the State Water Control Board if the permit action is a water permit action, federal law, or any regulation promulgated thereunder. The Director of the Department of Environmental Quality shall, forthwith, notify by email or mail at his last known address (1) each requester and (2) the applicant or permittee of the decision to grant or deny a public hearing. If the request for a public hearing is granted, the Director shall schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing. The Director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date. In making its decision, the Department shall consider (A) the verbal and written comments received during the public comment period and public hearing made part of the record, (B) any commentary of the Board, and (C) the agency files. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 10.1-1307.01 of the Code of Virginia, as amended by this act, or § 62.1-44.15:01 of the Code of Virginia. In addition, the Director may, in his discretion, convene a public hearing on a permit action.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703)583-3800 FAX (804) 698-4178
www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

Thomas A. Faha
Regional Director

MEMORANDUM

TO: State Water Control Board Members

THROUGH: Melanie D. Davenport
Director, Water Permitting Division *Melanie D. Davenport*

FROM: Sarah K. Sivers *Sarah K. Sivers*
Water Permit, Planning, and Monitoring Manager, Northern Regional Office

DATE: May 17, 2022

SUBJECT: Regulatory Amendments to Incorporate Changes to the Occoquan Policy Regulation (9VAC25-410)
Final Exempt Action – Amendment Conforming to 2022 Legislation

This regulatory amendment to the Occoquan Policy Regulation (9VAC25-410) is presented to the State Water Control Board (Board) for your consideration as a final regulation.

During the 2022 Session of the General Assembly, Senate Bill (SB) 567 was passed that directs the State Water Control Board to amend subdivision G 2 of 9VAC25-410-20 of the Virginia Administrative Code (The Occoquan Policy) to provide that VPDES permits may also be issued to an existing sewage treatment plant constructed and placed into service prior to January 1, 2001, serving no less than 10 homes but no more than 25 homes if such sewage treatment plant has a documented history of substantial noncompliance and it is not feasible to connect to a publicly owned sewage treatment plant.

Also during the 2022 Session, SB 657 was passed. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations and transfers the Board's existing authority to issue permits and orders to the

Department of Environmental Quality. This final regulatory action will amend this State Water Control Board regulation to incorporate changes made by Chapter 144 (SB 567) and Chapter 356 (SB 657) of the 2022 Acts of Assembly of the General Assembly.

At your Board meeting scheduled for June 22, 2022, the Department will request that the Board adopt these amendments as final regulations, authorize their publication, and affirm that the Board will receive, consider and respond to petitions by any interested persons at any time with respect to reconsiderations or revision.

cc: Melissa Porterfield, Office of Regulatory Affairs

ATTACHMENTS:

- Draft Virginia Regulatory Town Hall Documents (TH-09)
 - Revisions to CH 410 in response to SB 567 and SB 657 (2022 GA session)
- Chapter 144 of the Virginia Acts of Assembly of the 2022 General Assembly
 - SB 567
- Chapter 356 of the Virginia Acts of Assembly of the 2022 General Assembly
 - SB 657
- Final Exempt – GA2022 Amended Regulatory Text
 - 9VAC25-410 – RIS PROJECT 7164

1 **Project 7164 - Exempt Final**

2 **State Water Control Board**

3 **Revisions to CH 410 in response to SB 567 and 2022 Board bill (2022 GA session)**

4 **9VAC25-410-20. Long-range policy.**

5 A. Number and general location of regional treatment plants.

6 1. The number of high-performance regional plants which shall be permitted in this
7 watershed is not more than three, but preferably two, generally located as follows:

8 a. One plant in the Fauquier County/Warrenton area.

9 b. One plant in the Manassas area to serve the surrounding area in Prince William,
10 Fairfax, and Loudoun counties.

11 2. All point source discharges of treated sewage effluent will preferably be located at
12 least 20 stream miles above the Fairfax County Water Authority's raw water intake. In no
13 case shall a plant be located less than 15 miles above the raw water intake.

14 3. The provisions of 9VAC25-410-20 A 1 and A 2 shall not limit the consideration of land
15 disposal systems for waste treatment in the watershed, provided such systems shall
16 have no point source discharge to state waters and shall have the approval of the ~~State~~
17 ~~Water Control Board~~ Department of Environmental Quality (department).

18 B. Regional plant capacity allocations for the Occoquan basin.

19 1. The initial allotment of plant capacity for the Upper Occoquan Service Authority
20 treatment facility was approximately 10 MGD, based on all effluent being from high-
21 performance plants meeting the requirements of subsections D, E, and F of this section
22 and all those treatment facilities belonging to the City of Manassas, the City of Manassas
23 Park, the Greater Manassas Sanitary District, and Sanitary District 12 of Fairfax County
24 being abandoned.

25 2. Incremental increases in the regional plant capacity may be approved by the ~~board~~
26 department based on the results of a monitoring program that shows that current and
27 projected discharges from the high-performance plants do not create a water quality or
28 public health problem in the reservoir. The ~~board~~ department advises that since severe
29 infiltration/inflow stresses the performance reliability of the regional treatment plants,
30 jurisdictions must pursue I/I correction within their individual systems.

31 C. Prerequisites for preliminary plant approval. Prerequisites before the ~~board~~ department
32 gives approval to preliminary plans for a regional high-performance plant are:

33 1. A monitoring program for the receiving waters shall be in effect; and

34 2. The authority who is to operate the proposed plant shall enter into a written and
35 signed agreement with the ~~board~~ department that the authority shall meet the
36 administrative requirements of subsection F of this section.

37 D. Design concept for high-performance plants on the Occoquan.

38 1. Plant design requirements are:

39 a. The design of the high-performance sewage treatment plants discharging to the
40 Occoquan Watershed shall meet all the requirements specified here as well as those
41 specified in the most recent edition of the Sewage Collection and Treatment
42 Regulations (9VAC25-790-10 et seq.); and

- 43 b. The basic sewage plant design concept for the regional plants discharging to the
 44 Occoquan watershed shall be based on the Upper Occoquan Service Authority
 45 Wastewater Reclamation Facility.
- 46 2. Changes in plant design requirements will be made according to these criteria:
- 47 a. Changes to the plant design described here shall only be acceptable if the change
 48 does all of the following:
- 49 (1) Improves or equals the plant performance and final effluent quality;
- 50 (2) Increases or equals plant reliability and maintainability; and
- 51 (3) Has a demonstrated performance in a plant of at least 5 to 10 MGD size for an
 52 operating period of not less than one, but preferably two years.
- 53 b. Before such changes are incorporated in the plant, specific written approval shall
 54 be obtained from the board department; and
- 55 c. Changes to the plant design solely to reduce cost and which jeopardize plant
 56 performance and reliability will not be approved.
- 57 E. Plant performance requirements.
- 58 1. The plant performance requirements for high performance plants discharging to the
 59 Occoquan watershed are given in Table I.
- 60 2. Operation of the nitrogen removal facilities is required when the ambient nitrate
 61 concentration (as N) is 5.0 mg/l or higher in the Occoquan reservoir in the vicinity of the
 62 Fairfax County Water Authority intake point. The owner of the regional sewage authority
 63 is responsible for knowing ambient results of nitrate and when operation of nitrogen
 64 removal facilities is necessary.

TABLE I
MINIMUM EFFLUENT QUALITY REQUIREMENTS* FOR ANY REGIONAL SEWAGE TREATMENT PLANT IN THE OCCOQUAN WATERSHED
FINAL EFFLUENT REQUIREMENTS
COD mg/1 - 10.0
Suspended solids mg/1 - 1.0
Nitrogen mg/1 - 1.0**
Phosphorus mg/1 - 0.1
MBAS mg/1 - 0.1
Turbidity NTU - 0.5***
Coliform per 100 ml Sample - less than 2.0
*As measured on a monthly average unless otherwise noted. Since these are minimum requirements, the normal average would be expected to be substantially better.
**Unoxidized nitrogen (as TKN) Refer to 9VAC25-410-20 E 2 for further information.
***Measured immediately prior to chlorination.

65 F. Administrative and technical requirements for the control of the sewer system tributary to
66 a regional, high-performance plant in the Occoquan watershed.

67 1. The owner to whom the permit is issued for operation of a regional plant shall meet
68 the general and administrative requirements covered below. These requirements shall
69 also be contractually passed on by the owner to any parties or jurisdictions with which
70 the owner may contract for the processing of wastewater.

71 These requirements are applicable to regional sewage treatment plants.

72 2. The high-performance regional treatment plant shall be manned by an appropriate
73 number of trained and qualified operating maintenance and laboratory personnel and
74 manned continuously 24 hours a day, seven days a week throughout the year.

75 3. The owner shall include, as part of his preliminary and final plans and specifications
76 submitted to the ~~board~~ department for approval, a detailed statement indicating how
77 each of the technical and administrative requirements in this policy has been met. Any
78 proposed deviation from any of these requirements shall be clearly identified and
79 technically justified, and shall require formal ~~board~~ department approval. These
80 submittals shall also include:

81 a. Simplified fluid system diagrams that clearly identify the following:

82 (1) The average and peak capacity of each unit;

83 (2) The number of units of each type needed to handle the normal average flow and
84 the peak of flow; and

85 (3) The number of spare units and their capacity for both average and peak flow
86 cases shall also be identified.

87 In addition, a brief narrative summary description shall be submitted to identify what
88 has been done to ensure that each unit and major subsystem can be maintained and
89 expanded without release of effluent that does not meet the minimum standards.

90 b. A simple one-line power distribution system diagram showing how outside power
91 is brought into the plant and how power is distributed within the plant proper shall be
92 submitted. This diagram shall also show as a minimum:

93 (1) Ratings and characteristics of electrical components, such as transformers, circuit
94 breakers, and motor controllers making up the system;

95 (2) Protective devices such as thermal overloads, under frequency, or under voltage
96 relays;

97 (3) Voltages supplied by all fuses;

98 (4) Normal circuit breaker and switch conditions (notes shall also be provided as
99 required to cover abnormal, casualty, and emergency operating modes); and

100 (5) How electrical loads are combined into switch gear and load center. (The use of
101 cubicle outlines in phantom or dotted line is suggested.)

102 4. The final submittal of plans and specifications for the plant to the ~~board~~ department
103 shall include a systematic failure mode and effects analysis on the mechanical and
104 electrical portions of the plant so as to demonstrate that a single failure of a mechanical
105 or electrical component will not interrupt the plant operations which are necessary to
106 meet the effluent requirements of Table I of this policy.

107 5. Pumping stations on the collection systems that are located in the Occoquan
108 watershed and are tributary to a regional treatment works shall:

109 a. Have stand-by pumping units;

110 b. Have at least one "on-site" backup power supply;

- 111 c. Have at least one "off-site" power supply;
112 d. Be designed so that no single failure of a mechanical or electrical component
113 could degrade pumping capability;
114 e. Have pumps and valves arranged so that these units can be removed and
115 replaced without the by-passing of sewage;
116 f. Have flow measure devices with provisions for recording flow; and
117 g. Have retention basins of a minimum one-day capacity.

118 If these pumping stations are remote and unmanned, an alarm system shall be
119 provided at manned stations to indicate that problems are developing and to direct
120 maintenance assistance to the affected pumping station. The owner of each pumping
121 station shall be required to obtain a ~~State Water Control Board~~ department
122 certificate.

123 A waiver may be sought from requirement g above, particularly in new collection
124 systems exhibiting no I/I problems. However, the jurisdiction requesting such a
125 waiver must submit documentation to the ~~board~~ department for review that the sewer
126 system tributary to the pump station meets the criteria established by the most recent
127 edition of the Sewage Collection and Treatment Regulations (9VAC25-790-10 et
128 seq.) for infiltration/inflow, and any other such information that the ~~board~~ department
129 may require.

130 6. The major junctions in the collection system (e.g., at least at the 1 to 2 MGD collection
131 points) shall have continuous recording flow measuring devices to help in the early
132 identification of problem portions of a collection system in the event of unexplainable
133 high flows (e.g., excessive infiltration). Also, such flow measuring devices and isolation
134 valves shall be provided between jurisdictions as well as any others contracting for the
135 services of the regional plant. The flow measuring devices and isolation valves between
136 jurisdictions shall be under the control and responsibility of the owner to whom a plant
137 certificate is issued.

138 7. Each sewage treatment plant shall have a pretreatment program approved by the
139 ~~board~~ department.

140 8. Waste being processed in any existing small plants shall have the first priority on
141 treatment capacity and such capacity shall be specifically reserved for them in the new
142 high-performance regional plants. New developments are to have second priority.

143 9. If any of the various administrative procedures of the owner of the regional treatment
144 plant or of jurisdictions served by the plant prove ineffective under actual operating
145 conditions, the ~~board~~ department shall have the right to place new requirements on the
146 owner and jurisdictions and to require any necessary action by these parties to
147 physically correct the damage done to the reservoir due to ineffective implementation of
148 the administrative requirements covered here.

149 10. The owner's interceptor and collection systems of the jurisdictions in the Occoquan
150 watershed shall be designed, installed, inspected, and tested by the respective owner to
151 limit infiltration to 100 gal/inch-dia/mile/day as a maximum. The test results shall be
152 certified and submitted to the ~~board~~ department.

153 11. Whenever the owner enters into an agreement with a jurisdiction for services of a
154 regional plant, the owner shall be responsible for seeing that such jurisdictions have
155 ordinances and rules to meet all the applicable requirements covered by this policy.
156 These ordinances and rules shall meet the owner's approval and the owner shall monitor
157 and spot-check to see that the jurisdictions are effectively implementing their ordinances
158 and rules to meet the requirements covered here. The ~~board~~ department, at its

159 discretion, can request the owner to submit to the ~~board~~ department for its approval the
 160 ordinances and rules that will be used to meet the ~~board's~~ department's requirements
 161 covered here.

162 Further, any time a user violates any of the administrative or technical requirements of the
 163 contract between the user and the owner which can affect the plant operations, hydraulic
 164 loading, or effluent quality or which affect the reservoir's water quality due to urban runoff (e.g.,
 165 siltation), the owner shall not allow the user to discharge additional wastewater to the owner's
 166 plant until the problem has been resolved to the owner's satisfaction.

167 12. Up-to-date "as-built" drawings and manuals shall be available at least once a year
 168 for ~~board~~ department inspection and review. These documents shall include as a
 169 minimum:

170 a. Up-to-date as-built electrical and fluid system diagrams;

171 b. Detailed as-built and installed drawings; and

172 c. Normal operating and casualty procedures manual. The documents shall be
 173 updated at least once a year to reflect all changes and modifications to the plant.

174 13. The design engineer shall have the responsibility of meeting the proposed effluent
 175 quality as shown in Table I. To demonstrate that the plant as designed by the engineer
 176 can meet the effluent standards, the plant is to be operated under the supervision of the
 177 design engineer for a minimum of one year of continuous operation after the
 178 "debugging" period.

179 G. Other point source discharges.

180 1. Point sources other than regional plants will be permitted as regulated or required by
 181 the Virginia Pollutant Discharge Elimination System (VPDES) permit regulation
 182 (9VAC25-31-10 et seq.).

183 2. VPDES permits may be issued:

184 a. for For single family homes with failing septic tanks, stormwater, pollution
 185 remediation projects, and minor industries. The permitting of major discharges (as
 186 defined in 40 CFR Part 122) other than regional sewage treatment plants is strictly
 187 prohibited with the exception of pollution remediation projects that are shown to be
 188 feasible and no other alternatives are available.

189 b. To an existing sewage treatment plant constructed and placed into service prior to
 190 January 1, 2001, serving no less than 10 homes but no more than 25 homes if such
 191 sewage treatment plant has a documented history of substantial noncompliance and
 192 it is not feasible to connect to a publicly owned sewage treatment plant.

193 3. No permit as authorized in subdivisions 1 and 2a of this subsection shall be issued or
 194 reissued unless the applicant demonstrates that it is not feasible to connect to a regional
 195 plant and that there is not a feasible alternative except to discharge.

196 **9VAC25-410-30. Expansion of existing plants in the Occoquan watershed.**

197 A. One of the objectives of the Occoquan Policy is to reduce water quality problems in the
 198 Occoquan watershed due to pollution from point sources. To date the means of accomplishing
 199 this objective have been the construction and utilization of a high-performance regional plant -
 200 the Upper Occoquan Sewage Authority (UOSA) - and the elimination of 11 low-performance
 201 treatment plants in favor of the UOSA facility. The 11 low-performance treatment plants
 202 constituted the major point sources of pollution in the Occoquan Watershed; however, there are
 203 a number of smaller sewage treatment facilities which are still discharging. These facilities were
 204 not connected to the regional facility for at least one of the following reasons: (i) a collector
 205 system to the regional plant was not constructed in close enough proximity to provide service, or

206 (ii) the small facility was outside of the service area for the regional plant. At some point in the
207 future, these remaining plants may wish to expand and increase their flows.

208 B. Existing waste treatment facilities may be expanded to receive increased sewage flows;
209 however, the degree of treatment must also be upgraded so that there will be no increase in the
210 quantity of pollutant loadings discharged to the receiving stream. A no-discharge land-
211 application system may be considered in lieu of upgrading a facility.

212 C. Plants not meeting approved design performance limits will not be allowed additional
213 capacity until the owner has installed additional treatment and demonstrated by means of a
214 minimum of three months of performance data that the plant has been brought within its
215 approved design performance levels and can accept additional waste loads without exceeding
216 such approved design performance levels.

217 D. No expansion or continued discharge shall be approved if it is feasible for the flow to be
218 directed to a regional plant.

219 E. Proposed interim expansion of plants shall be reviewed with the appropriate regional
220 sewage authority to assure that such expansions are coordinated with the authority regional
221 plans and can be readily incorporated into the regional system.

222 F. The plans and specifications for expansion of collection and interceptor systems shall be
223 reviewed with the appropriate regional sewage authority for its comments before they are
224 submitted to the ~~board~~ department and the Virginia Department of Health for approval. Any
225 proposed expansion of collection and interceptor systems shall meet the technical and
226 administrative requirements of 9VAC25-410-20 F, and the jurisdiction proposing such an
227 expansion shall submit a formal letter to the ~~board~~ department stating that its expansion will
228 meet the requirements of 9VAC25-410-20 F.

229 **9VAC25-410-40. Occoquan Watershed Monitoring Program (OWMP).**

230 Due to the critical nature of the receiving waters, intensive monitoring will be required to
231 ensure that plants achieve desired performance levels at all times, and the effects of point
232 sources and nonpoint sources on the receiving waters are measured and projected.

233 1. Watershed monitoring subcommittee.

234 a. In order to ensure that performance levels are maintained and that the effects of
235 point sources and nonpoint sources on receiving waters are known, a watershed
236 monitoring subcommittee shall be established and shall be convened at least once
237 each calendar year. A subcommittee of this type must necessarily be composed of
238 high-caliber personnel knowledgeable in the field of water and wastewater treatment
239 and management. Accordingly, the subcommittee shall consist of two ex-officio
240 members or their designated representatives as follows:

241 (1) Director of Virginia Department of Health's Division of Water Programs;

242 (2) Director of Virginia Department of Conservation and Recreation's Division of Soil
243 and Water Conservation; and three other members or their designated
244 representatives as follows:

245 (a) A representative of the Environmental Protection Agency;

246 (b) A representative of a state university in Virginia; and

247 (c) A nationally recognized consultant in the water and wastewater treatment or
248 water quality management fields.

249 b. The ex-officio members shall select and submit to the ~~board~~ department for
250 approval the names of the other members of the subcommittee. The subcommittee
251 shall elect a chairman.

252 c. From time to time the subcommittee may seek additional expert advice.

253 2. Monitoring subcommittee's responsibilities. The watershed monitoring subcommittee shall
254 have the following responsibilities:

255 a. To oversee that there is adequate monitoring of the regional plant effluent and
256 process control testing at the regional plant;

257 b. To develop a water quality monitoring program for the Occoquan reservoir and its
258 tributary streams to ensure that there is a continuous record of water quality
259 available. To further ensure that projections are made to determine the effect of
260 additional waste loading from point sources as well as nonpoint sources;

261 c. To ensure that the stream monitoring program is separate and distinct from plant
262 process control testing and effluent monitoring;

263 d. To review data collected from the monitoring program and submit to the ~~board~~
264 department and the various jurisdictions reports on the status of plant performance
265 and water quality in the watershed at least once each year;

266 e. To report to the ~~board~~ department immediately significant changes in plant
267 performance or water quality due to either point source or non-point source pollution;

268 f. To maintain close liaison with the Fairfax County Water Authority in order to ensure
269 satisfactory raw water which can be adequately treated at the authority's facilities;
270 and

271 g. To establish the Occoquan Watershed Monitoring Laboratory (OWML) to conduct
272 sampling and analyses to fulfill the above responsibilities.

273 3. Provision for restructuring of the OWMP.

274 a. The Occoquan Watershed Monitoring Program (OWMP) and the Occoquan
275 Watershed Monitoring Laboratory (OWML) were established in accordance with the
276 above provisions. This was done on July 1, 1972. Since that time a large body of
277 information regarding the functioning of the Occoquan reservoir system has been
278 accumulated. Major point sources have been consolidated into and eliminated by a
279 high-performance sewage treatment facility (UOSA). As growth increases in the
280 watershed, this trend is expected to continue.

281 b. The work performed by OWML has indicated that the key to water quality is a two
282 part issue. Those parts are point source pollution and non-point source pollution.
283 Point source discharges in the watershed are currently regulated by the ~~board's~~
284 department's VPDES permit program. Non-point sources of pollution are currently
285 being addressed by state and local voluntary and mandatory control programs.
286 However, in the future it may be necessary that additional mandatory programs be
287 adopted.

288 c. The program shall be evaluated periodically for restructuring to account for shifts
289 in monitoring trends and funding and any recommended restructuring approved by
290 the ~~board~~ department prior to implementation. The regional sewage plants are
291 ultimately responsible for the monitoring program with the exception of the non-point
292 source elements.

293 4. Financing the OWMP.

294 a. It is recommended that the cost of the OWMP be split equally between water
295 supply and sewage uses. This would mean that the Fairfax County Water Authority
296 would have to fund half of the OWMP budget while the counties of Fairfax, Prince
297 William, Loudoun, and Fauquier and the cities of Manassas and Manassas Park
298 would be responsible for jointly funding the other half. That portion of the OWMP
299 budget funded by the counties and cities would be divided so that each jurisdiction
300 would be charged in proportion to its allotted sewage capacity in the Occoquan

301 watershed. The budget shall be reviewed by the jurisdictions prior to approval by the
302 subcommittee.

303 b. Written agreements shall be obtained from each of the jurisdictions which shall
304 commit them to supply the above funds yearly to finance the OWMP. This monitoring
305 program is for their protection and benefit. If for some reason a county or city does
306 not wish to retain its sewage allotment in the Occoquan watershed or will not fund
307 the monitoring program, then its allotment can be divided up among the remaining
308 participating jurisdictions, with their portion of the cost of the monitoring program
309 rising accordingly. The regional sewage plants are ultimately responsible for
310 monitoring with the exception of non-point source elements.

311 c. If federal funds and assistance can be obtained, the cost to the counties and the
312 Fairfax County Water Authority will be reduced proportionally. The funding of the
313 program without federal funds is to be assumed, so as not to further delay or
314 complicate the initiation of this program.

315 d. The Office of Sponsored Programs, Virginia Polytechnic Institute and State
316 University, has agreed to be responsible for billing, receiving, and disbursement of
317 funds to the OWMP.



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-410
VAC Chapter title(s)	Occoquan Policy
Action title	Revisions to CH 410 in response to SB 567 and SB 657 (2022 GA session)
Final agency action date	June 22, 2022
Date this document prepared	May 17, 2022

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action changes the existing language of the regulation (G 2 of 9VAC25-410-20) to incorporate a provision that Virginia Pollutant Discharge Elimination System permits may also be issued to an existing sewage treatment plant constructed and placed into service prior to January 1, 2001, serving no less than 10 homes but no more than 25 homes if such sewage treatment plant has a documented history of substantial noncompliance and it is not feasible to connect to a publicly owned sewage treatment plant. Chapter 410 is also amended to address changes to the authority of the State Water Control Board. Section 2.2-4006 A 4 a of the Administrative Process Act allows the Board to adopt a regulatory amendment that is necessary to conform to changes in Virginia statutory law. This regulation is required to conform the existing regulation to changes directed by Chapter 144 of the 2022 Acts of Assembly (SB 567) and Chapter 356 of the 2022 Acts of Assembly (SB 657).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

SB 567 and SB 657 were passed during the 2022 Session of the General Assembly. SB 567 directs the State Water Control Board to amend subdivision G 2 of 9VAC25-410-20 of the Virginia Administrative Code (The Occoquan Policy) to provide that VPDES permits may also be issued to an existing sewage treatment plant constructed and placed into service prior to January 1, 2001, serving no less than 10 homes but no more than 25 homes if such sewage treatment plant has a documented history of substantial noncompliance and it is not feasible to connect to a publicly owned sewage treatment plant. Chapter 410 is also amended as directed by SB 657. SB657 limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations, and transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. The Governor signed these bills into law on April 7, 2022 (SB 567 – Chapter 144 of the 2022 Acts of Assembly) and April 11, 2022 (SB 657 – Chapter 356 of the 2022 Acts of Assembly) and these statutory changes will become effective July 1, 2022. This regulatory action is required to conform the existing regulation to changes in Code.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Water Control Board adopted these amendments to 9VAC25-410 on June 22, 2022 as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

2022 SESSION

CHAPTER 144

An Act to allow the State Water Control Board to amend certain regulations.

[S 567]

Approved April 7, 2022

Be it enacted by the General Assembly of Virginia:

1. § 1. *The State Water Control Board shall amend subdivision G 2 of 9VAC25-410-20 of the Virginia Administrative Code to provide that Virginia Pollutant Discharge Elimination System permits may also be issued to an existing sewage treatment plant constructed and placed into service prior to January 1, 2001, serving no less than 10 homes but no more than 25 homes if such sewage treatment plant has a documented history of substantial noncompliance and it is not feasible to connect to a publicly owned sewage treatment plant.*



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Jutta Schneider, Director, Water Planning Division

A handwritten signature in black ink that reads 'Jutta Schneider'.

DATE: May 3, 2022

SUBJECT: Final Exempt Action: Amendment to change Chesapeake Bay Preservation Area Designation and Management Regulations in response to Chapters 356, 486, and 207 of the 2022 Virginia Acts of Assembly

At the June 2022, meeting of the State Water Control Board, the Department will request the Board to adopt final amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830 et seq.). The regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

BACKGROUND

These changes are being made in response to Chapters 356 (SB 657), 486 (HB769), and 207 (HB771), of the 2022 Virginia Acts of Assembly.

Chapter 356 of the Virginia Acts of Assembly made changes to the Code of Virginia that: limits the authority of the State Water Control Board to the issuance of regulations; and transfers the Board's existing authority to issue orders to the Department of Environmental Quality. The Governor signed this bill into law on April 11, 2022.

Chapter 486 of the 2022 Virginia Acts of Assembly makes changes to the Code of Virginia, adding a requirement directly related to compliance with onsite sewage system pump-outs to be managed and enforced by the Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties. The Governor signed this bill into law on April 11, 2022.

Chapter 207 of the 2022 Virginia Acts of Assembly made changes to the Code of Virginia, adding a requirement directing localities in Tidewater Virginia (which are defined by statute) to publish criteria and elements on its website adopted by the locality to implement its local plan as required by the Chesapeake Bay Preservation Act. The Governor signed this bill into law on April 8, 2022.

Copies of Chapters 356, 486, and 207 of the 2022 Virginia Acts of Assembly are attached to this memorandum. The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

SUMMARY OF FINAL AMENDMENTS TO THE REGULATION

Pursuant to Chapter 356 of the 2022 Virginia Acts of Assembly, 9VAC25-830 et seq. is being amended to limit the authority of the State Water Control Board to the issuance of regulations and transfers the Board's existing authority to issue orders to the Department of Environmental Quality. Changes to the regulations included changing designations from "board" to "department" where appropriate, and a change in the definition of "Board."

Pursuant to Chapter 486 of the 2022 Virginia Acts of Assembly, 9VAC25-830-130(7)(a)(3) is being amended to add a requirement, effective July 1, 2023, related to compliance with onsite sewage system pump-outs, to be managed and enforced by the Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties.

Pursuant to Chapter 207 of the 2022 Acts of Assembly, 9VAC25-830-60 is being amended to add a requirement directing localities in Tidewater Virginia (defined by statute) to publish criteria and elements on its website adopted by the locality to implement its local plan as required by the Chesapeake Bay Preservation Act.

This is a final exempt rulemaking pursuant to section 2.2-4006 A.4.a. of the Code of Virginia (i.e., these are regulations that are "Necessary to conform to changes in Virginia statutory law . . . where no agency discretion is involved.").

STAFF RECOMMENDATION

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830 et seq.) and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

ATTACHMENTS

- A. Exempt Action Final Regulation Agency Background Document for the Chesapeake Bay Preservation Area Designation and Management Regulations
- B. Project 7180- Final Exempt Action: Amendment to change 9VAC25-830 et seq. in response to Chapters 356, 486, and 207 of the 2022 Virginia Acts of Assembly

PRESENTER CONTACT INFORMATION

Name: Justin Williams, Director, Office of Watersheds and Local Government Assistance Programs

Phone: (804) 659-1125

Email: Justin.Williams@deq.virginia.gov

Project 7180 - Exempt Final

State Water Control Board

final exempt- CH830 revisions (HB769 and HB771) and board bill revisions (2022 GA) 9VAC25-830-40. Definitions.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:68 of the Act.

"Act" means the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Adaptation measure" means a project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.

"Best management practice" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

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

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Canopy tree" means a tree that typically reaches 35 feet in height or taller when mature.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of this chapter and § 62.1-44.15:74 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system and has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51 of the Code of Virginia, and where the adjacent lands would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the ~~board~~ department under this chapter.

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

"Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

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

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface

layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

"Infill" means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" means those areas designated by the local government pursuant to 9VAC25-830-100.

"Local governments" means counties, cities, and towns. This chapter applies to local governments in Tidewater Virginia, as defined in § 62.1-44.15:68 of the Act, but the provisions of this chapter may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and this chapter.

"Local program adoption date" means the date a local government meets the requirements of subdivisions 1 and 2 of 9VAC25-830-60.

"Mature tree" means a canopy tree with a diameter at breast height (DBH) of 12 inches or greater or an understory tree with a DBH of four inches or greater.

"Nature-based solution" means an approach that reduces the impacts of sea-level rise, flooding and storm events through the use of environmental processes and natural systems.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water 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, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 62.1-44.15:74 of the Act and this chapter, prior to issuance of a building permit.

"Public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law and (ii) the Virginia Stormwater Management Act. This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Redevelopment" means the process of developing land that is or has been previously developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality

value due to the ecological and biological processes they perform or are sensitive to impacts that may result in significant degradation to the quality of state waters.

"Silvicultural activities" means forest management activities, including the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

"Substantial alteration" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 62.1-44.15:68 of the Act.

"Understory tree" means a tree that typically reaches 12 feet to 35 feet in height when mature.

"Use" means an activity on the land other than development including agriculture, horticulture and silviculture.

"Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

9VAC25-830-60. Elements of program.

A. Local programs shall contain the elements listed below.

1. A map delineating Chesapeake Bay Preservation Areas.
2. Performance criteria applying in Chesapeake Bay Preservation Areas that employ the requirements in Part IV (9VAC25-830-120 et seq.) of this chapter.
3. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of state waters, in accordance with criteria set forth in Part V (9VAC25-830-160 et seq.) of this chapter.
4. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI (9VAC25-830-180 et seq.) of this chapter, and (ii) requires compliance with all criteria set forth in Part IV (9VAC25-830-120 et seq.) of this chapter.
5. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI (9VAC25-830-180 et seq.) of this chapter, and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV (9VAC25-830-120 et seq.) of this chapter.
6. A plan of development process prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of state waters.

B. Each local government in Tidewater Virginia shall publish on its website the elements and criteria adopted to implement its local plan, including those elements and criteria required by subsection A of this section.

9VAC25-830-90. Resource Management Areas.

A. Resource Management Areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

B. A Resource Management Area shall be provided contiguous to the entire inland boundary of the Resource Protection Area. The following land categories shall be considered for inclusion in the Resource Management Area and, where mapping resources indicate the presence of these land types contiguous to the Resource Protection Area, should be included in designations of Resource Management Areas:

1. Floodplains;
2. Highly erodible soils, including steep slopes;
3. Highly permeable soils;
4. Nontidal wetlands not included in the Resource Protection Area; and
5. Such other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters.

C. Resource Management Areas shall encompass a land area large enough to provide significant water quality protection through the employment of the criteria in Part IV (9VAC25-830-120 et seq.) and the requirements in Parts II (9VAC25-830-50 et seq.) and V (9VAC25-830-160 et seq.) of this chapter.

1. Local governments with few or no Resource Management Area land types evident from available mapping resources should evaluate the relationships of the following land categories to water quality protection in making their Resource Management Area designations. The ~~board~~ department will consider the degree to which these land categories are included when evaluating the consistency of a locality's Resource Management Area designation for achievement of significant water quality protection:

- a. Known Resource Management Area land types;
- b. Developable land within the jurisdiction;
- c. Areas targeted for redevelopment; and
- d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

2. Localities with no mapping resources or with mapping resources for only portions of their jurisdiction should evaluate the relationships of the following land categories to water quality protection in making their Resource Management Area designations. The ~~board~~ department will consider the degree to which these land categories are included when evaluating the consistency of a local government's Resource Management Area designation for achievement of significant water quality protection. Furthermore, such designations may be considered an interim designation until such time as appropriate mapping resources become available if such resources are considered by the ~~board~~ department to be useful in determining the Resource Management Area boundaries, in which case the ~~board~~ department will reevaluate the interim Resource Management Area designations at a later date:

- a. Known Resource Management Area land types;
- b. Developable land within the jurisdiction;

- c. Areas targeted for redevelopment; and
 - d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.
3. Local governments should consider extending the Resource Management Area boundary to the remainder of the lot, parcel, or development project upon which Resource Management Area-type features are present.
 4. Local governments shall demonstrate how significant water quality protection will be achieved within designated Resource Management Areas, as well as by each local program as a whole, and to explain the rationale for excluding eligible Resource Management Area components that are not designated.
 5. It is not the intent of the board, nor is it the intent of the Act or this chapter, to require that local governments designate all lands within their jurisdiction as Chesapeake Bay Preservation Areas. It is also not the intent of the board to discourage or preclude jurisdiction-wide designations of Resource Management Areas when the local government considers such designations appropriate, recognizing that greater water quality protection will result from more expansive implementation of the performance criteria. The extent of the Resource Management Area designation should always be based on the prevalence and relation of Resource Management Area land types and other appropriate land areas to water quality protection.

9VAC25-830-130. General performance criteria.

Through their applicable land use ordinances, regulations, and enforcement mechanisms, local governments shall require that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the proposed use or development.
2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed. Mature trees shall be protected during development and only removed where necessary, including to provide for the proposed use or development.

A locality which has an ordinance providing for the conservation, planting, and replacement of trees during the land development process pursuant to § 15.2-961 or 15.2-961.1 of the Code of Virginia may rely on such ordinance for demonstrating compliance with this requirement related to mature trees in Resource Management Areas.

3. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of 9VAC25-830-240.
4. Land development shall minimize impervious cover consistent with the proposed use or development.
5. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks, and drainfields, but otherwise as defined in § 62.1-44.15:51 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment Control Law and attendant regulations.
6. Any Chesapeake Bay Preservation Act land-disturbing activity as defined in § 62.1-44.15:24 of the Code of Virginia shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.

7. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

a. Have pump-out accomplished for all such systems at least once every five years.

(1) If deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.

(2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of onsite sewage treatment systems to submit documentation every five years, certified by an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

(3) Effective July 1, 2023, requirements of this section directly related to compliance with onsite sewage system pump-outs shall be managed and enforced by the Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties.

b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an onsite sewage treatment system that operates under a permit issued by the ~~board~~ department. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the 100% reserve sewage disposal site, local governments may offer the owners of such systems the option of installing an alternating drainfield system meeting the following conditions:

(1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.

(2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.

(3) The two alternating drainfields shall be connected by a diversion valve, approved by the local health department, located in the pipe between the septic (aerobic) tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the other at a time. However, diversion valves shall not be used for the following types of treatment systems:

(a) Sand mounds;

- (b) Low-pressure distribution systems;
 - (c) Repair situations when installation of a valve is not feasible; and
 - (d) Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local health department.
- (4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage and leakproof and designed so that the effluent from the tank can be directed to flow into either one of the two distribution boxes).
 - (5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.
 - (6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.
 - (7) In lieu of the aforementioned diversion valve, any device that can be designed and constructed to conveniently direct the flow of effluent from the tank into either one of the two distribution boxes may be approved if plans are submitted to the local health department and found to be satisfactory.
 - (8) The local government shall require that the owner alternate the drainfields every 12 months to permit the yearly resting of half of the absorption system.
 - (9) The local government shall ensure that the owner are notified annually of the requirement to switch the valve to the opposite drainfield.
8. Land upon which agricultural activities are being conducted, including crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.
- a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:
 - (1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.
 - (2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).

(3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

10. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other onsite activities to begin.

9VAC25-830-140. Development criteria for Resource Protection Areas.

In addition to the general performance criteria set forth in 9VAC25-830-130, the criteria in this section are applicable in Resource Protection Areas.

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.

a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.

b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

(1) It does not conflict with the comprehensive plan;

(2) It complies with the performance criteria set forth in 9VAC25-830-130;

(3) Any nonwater-dependent component is located outside of Resource Protection Areas; and

(4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of impervious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater

management criteria set forth in the Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.

d. Roads and driveways not exempt under subdivision B 1 of 9VAC25-830-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

(1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;

(2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;

(3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and

(4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.

e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities:

a. Local governments shall establish administrative procedures to review such exemptions.

b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 5 of 9VAC25-830-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of 9VAC25-830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the

adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. Where such buffer must be established, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. Where such buffer must be reestablished, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.

4. Permitted encroachments into the buffer area.

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Such vegetated area where established shall include the planting of trees as appropriate to site conditions. Inclusion of native species in tree planting is preferred.

(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;

(2) Conditions or mitigation measures imposed through a previously approved exception shall be met;

(3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and

(4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Mature trees shall be preserved and trimmed or pruned in lieu of removal as site conditions permit and any removal should be limited to the fewest number of trees feasible. When trees are removed to provide for sight lines and vista, they shall be replaced with trees as appropriate to site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. Inclusion of native species in tree replanting is preferred.

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. Mature trees shall be removed only as necessary for the installation and maintenance of the projects consistent with the best available technical advice project plans, and applicable permit conditions or requirements. Trees shall be utilized in the project when vegetation is being established as appropriate to the site conditions and the project specifications. Inclusion of native species in tree planting is preferred.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Nutrient Management Training and Certification Regulations (4VAC50-85) administered by the Virginia Soil and Water Conservation Board.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Nutrient Management Training and Certification Regulations (4VAC50-85) administered by the

Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the ~~board~~ department of all development requiring such an assessment.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. In considering such measures, local governments shall

consider the planting of trees as a component of any such measure. Inclusion of native species in tree planting is preferred.

9VAC25-830-210. Local assistance guidance.

A. The department will prepare guidance to assist local governments in the administration of local programs in order to implement the Act and this chapter. The guidance will be updated periodically to reflect the most current planning and zoning techniques, effective best management practices, and amendments to the Act or regulations. The guidance will be made available to the public.

B. The guidance will recommend a schedule for the completion of local program elements and their submission to the ~~board~~ department for its information to ensure timely achievement of the requirements of the Act and timely receipt of assistance. The ~~board~~ department will consider compliance with the schedule in allocating financial and technical assistance.

9VAC25-830-220. ~~Board~~ Department to establish liaison.

The ~~board~~ department will establish liaison with each local government to assist the local government in developing and implementing its local program, in obtaining technical and financial assistance, and in complying with the Act and this chapter.

9VAC25-830-240. Preparation and submission of management program.

Local governments must adopt the full management program, which will consist of Phases I-III as defined in this section and including any revisions to comprehensive plans, zoning ordinances, subdivision ordinances, and other local authorities necessary to implement the Act. Prior to adoption, local governments may submit any proposed revisions to the ~~board~~ department for comments. Criteria are provided below for local government use in preparing local programs and the ~~board's~~ department's use in determining local program consistency.

1. Phase I shall consist of the designation of Chesapeake Bay Preservation Areas and adoption of the performance criteria. This phase of designating Chesapeake Bay Preservation Areas as an element of the local program should include:

- a. Utilizing existing data and mapping resources to identify and describe tidal wetlands, nontidal wetlands, tidal shores, water bodies with perennial flow, flood plains, highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III (9VAC25-830-70 et seq.) of this chapter;
- b. Determining, based upon the identification and description, the extent of Chesapeake Bay Preservation Areas within the local jurisdiction;
- c. Preparing an appropriate map or maps delineating Chesapeake Bay Preservation Areas;
- d. Preparing amendments to local ordinances that incorporate the performance criteria of Part IV (9VAC25-830-120 et seq.) of this chapter or the model ordinance prepared by the ~~board~~ department;
- e. Establishing, if necessary, and incorporating a plan of development review process. Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas shall be accomplished through a plan of development procedure pursuant to § 15.2-2286 A 8 of the Code of Virginia to ensure compliance with the Act and this chapter. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with this chapter.

f. Conducting a public hearing. Prior to adopting Chesapeake Bay Preservation Areas and the performance criteria, each local government shall hold a public hearing to solicit public comment regarding these local program components.

g. Providing copies of the adopted program documents and subsequent changes thereto to the board department for consistency review, as set forth in subdivision 5 of this section.

2. Phase II shall consist of local governments reviewing and revising their comprehensive plans, as necessary, for compliance with § 62.1-44.15:74 of the Act, in accordance with the provisions set forth in Part V (9VAC25-830-160 et seq.) of this chapter.

3. Phase III shall consist of local governments reviewing and revising their land development regulations and processes, which include but are not limited to zoning ordinances, subdivision ordinances, and the plan of development review process, as necessary, to comply with § 62.1-44.15:74 of the Act and to be consistent with the provisions set forth in Part VI (9VAC25-830-180 et seq.) of this chapter.

4. Consistent with §§ 62.1-44.15:73, 62.1-44.15:74, and 62.1-44.15:77 of the Act local governments may use civil penalties to enforce compliance with the requirements of local programs.

5. Review by the board department.

a. The board department will review proposed elements of a program phase within 60 days according to review policies adopted by the board department. If the proposed program phase is consistent with the Act, the board department will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and available to accomplish the proposed program phase. If the proposed program phase or any part thereof is not consistent, the board department will notify the local government in writing, stating the reasons for a determination of inconsistency and specifying needed changes. Copies of the adopted program documents and subsequent changes thereto shall be provided to the board department.

b. The board department will review locally adopted elements of a program phase according to review policies adopted by the board and as set forth in 9VAC25-830-260.

9VAC25-830-250. Applicability.

The Act requires that the board department ensure that local governments comply with the Act and regulations and that their comprehensive plans, zoning ordinances and subdivision ordinances are in accordance with the Act. To satisfy these requirements, the board has adopted this chapter and the department will monitor each local government's compliance with the Act and this chapter.

9VAC25-830-260. Administrative proceedings.

Subdivision 8 of § 62.1-44.15:69 and § 62.1-44.15:71 of the Act provide that the board department shall ensure that local government comprehensive plans, subdivision ordinances and zoning ordinances are in accordance with the provisions of the Act, and that it shall determine such compliance in accordance with the provisions of the Administrative Process Act. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the board department and the judicial review thereof. The board department will provide a copy of its decision to the local government. If any deficiencies are found, the board department will establish a schedule for the local government to come into compliance.

1. In order to carry out its mandated responsibilities under subdivision 10 of § 62.1-44.15:69 and § 62.1-44.15:71 of the Act, the board department will:

a. Require that each Tidewater local government submit an annual implementation report outlining the implementation of the local program. The board department will develop reporting criteria which outline the information to be included in the reports and the time frame for their submission. The board department will use the information in these reports to assess local patterns of compliance with the Act and this chapter and to evaluate the need for an administrative proceeding to more closely review any individual local government's compliance. All proceedings of this nature will be developed and conducted in accordance with this section.

b. Develop a compliance review process. Reviews will occur on a five-year cycle, and, when feasible, will be conducted as part of the local government's comprehensive plan review and update process. The department may also conduct a comprehensive or partial program compliance review and evaluation of a local government program more frequently than the standard schedule. The review process shall consist of a self-evaluation by each local government of local program implementation and enforcement as well as an evaluation by department staff. Based on these evaluations, the board department may find the program compliant or, if deficiencies are found, the board department will establish a corrective action plan and a schedule for the local government to come into compliance. The board department shall provide a copy of its decision to the local government that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government has not implemented the necessary compliance actions identified by the board department within the schedule established by the board department, or such additional period as is granted to complete the implementation of the compliance actions, then the board department shall have the authority to issue a special order to any local government imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per day per violation for noncompliance with the state program, to be paid into the state treasury and deposited into the Virginia Stormwater Management Fund established by § 62.1-44.15:29 of the Code of Virginia.

(1) The self-evaluation shall be conducted by each local government according to procedures developed by the board department.

(2) At a minimum, the department staff's evaluation will include a review of previous annual reports and site visits.

2. Certification of a local program. Upon a satisfactory finding resulting from the compliance review process, the board department will certify that the local program is being implemented and enforced by the local government consistent with the Act and this chapter and is, therefore, in compliance. Such a certification shall be valid for a period of five years until the local government's next scheduled review, unless the board department finds a pattern of noncompliance during the interim period of time, pursuant to subdivision 1 of this section.

9VAC25-830-270. Legal proceedings.

Subdivision 10 of § 62.1-44.15:69 and § 62.1-44.15:71 of the Act provide that the board department shall take administrative and legal actions to ensure compliance by local governments with the provisions of the Act. Before taking legal action against a local government to ensure compliance, the board department shall, unless it finds extraordinary circumstances, initiate a proceeding under the Act and 9VAC25-830-260 to obtain such compliance and give the local government at least 15 days notice of the time and place at which it will decide whether or not to take legal action. If it finds extraordinary circumstances, the board department may proceed

directly to request the Attorney General to enforce compliance with the Act and this chapter. Administrative actions will be taken pursuant to 9VAC25-830-260.

Part IX

Miscellaneous

9VAC25-830-280. Delegation of authority. (Repealed.)

~~The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~



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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-830 et seq.
VAC Chapter title(s)	Chesapeake Bay Preservation Area Designation and Management Regulations
Action title	Final Exempt CH 830 Changes in Response to SB657, HB769, and HB771
Final agency action date	
Date this document prepared	May 2, 2022

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action changes the existing language of the regulation (9VAC25-830 et seq.) to incorporate changes resulting from the approval and passage of Senate Bill 657 (SB657), House Bill 769 (HB769), and House Bill 771 (HB771), during the 2022 General Assembly Session (Virginia Acts of Assembly, Chapters 356, 486, and 207).

Necessary revisions to the regulations include: limiting the authority of the State Water Control Board to issuance of regulations (SB657); adding requirements effective July 1, 2023, directly related to compliance with onsite sewage system pump-outs to be managed and enforced by the Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties (H769); and requiring localities in Tidewater Virginia (which is defined in the statute)

to publish criteria and elements adopted by the locality to implement its local plan as required by the Chesapeake Bay Preservation Act on its website (HB771).

§2.2-4006(A)(4)(a) of the Administrative Process Act allows the Board to adopt regulatory amendments that are necessary to conform to changes in Virginia statutory law. This regulatory action is required to conform the existing regulation to changes in Code.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

SB657, HB769, and HB771 were passed during the 2022 Session of the Virginia General Assembly. SB657 made changes to the Code of Virginia that: limits the authority of the State Water Control Board to the issuance of regulations and transfers the Board's existing authority to issue orders to the Department of Environmental Quality. Changes to the regulations include changing designations from "board" to "department" where appropriate; and a change in the definition of "Board". The Governor signed this bill into law on April 11, 2022 (SB657 – Chapter 356 of the Virginia Acts of Assembly – 2022 Session).

HB769 made changes to the Code of Virginia, adding a requirement directly related to compliance with onsite sewage system pump-outs to be managed and enforced by the Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties. The Governor signed this bill into law on April 11, 2022 (HB769- Chapter 486 of the Virginia Acts of Assembly-2022 Session).

HB 771 made changes to the Code of Virginia, adding a requirement directing localities in Tidewater Virginia (which are defined in the statute) to publish criteria and elements on its website adopted by the locality to implement its local plan as required by the Chesapeake Bay Preservation Act. The Governor signed this bill into law on April 8, 2022 (HB771- Chapter 207 of the Virginia Acts of Assembly-2022 Session).

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Water Control Board adopted these regulatory amendments to 9VAC25-830 et seq. on June 22, 2022, as a final regulation and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 207

An Act to amend and reenact § 62.1-44.15:67 of the Code of Virginia, relating to publication of local Chesapeake Bay Preservation Area information.

Approved April 8, 2022

[H 771]

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:67 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:67. Cooperative state-local program.

A. Healthy state and local economies and a healthy Chesapeake Bay are integrally related; balanced economic development and water quality protection are not mutually exclusive. The protection of the public interest in the Chesapeake Bay, its tributaries, and other state waters and the promotion of the general welfare of the people of the Commonwealth require that (i) the counties, cities, and towns of Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision ordinances; (ii) the counties, cities, and towns of Tidewater Virginia establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries; (iii) the Commonwealth make its resources available to local governing bodies by providing financial and technical assistance, policy guidance, and oversight when requested or otherwise required to carry out and enforce the provisions of this article; and (iv) all agencies of the Commonwealth exercise their delegated authority in a manner consistent with water quality protection provisions of local comprehensive plans, zoning ordinances, and subdivision ordinances when it has been determined that they comply with the provisions of this article.

B. Local governments have the initiative for planning and for implementing the provisions of this article, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this article, and by providing those resources necessary to carry out and enforce the provisions of this article.

C. *Each local government in Tidewater Virginia shall publish on its website the elements and criteria adopted to implement its local plan as required by this article, including those elements and criteria required by 9VAC25-830-60 for local programs.*

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 486

An Act to amend and reenact §§ 32.1-164 and 62.1-44.15:72 of the Code of Virginia, relating to Department of Health; onsite sewage treatment system pump-out oversight; certain localities.

[H 769]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-164 and 62.1-44.15:72 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-164. Powers and duties of Board; regulations; fees; onsite soil evaluators; letters in lieu of permits; inspections; civil penalties.

A. The Board shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage by onsite sewage systems and alternative discharging sewage systems, and treatment works as they affect the public health and welfare. The Board shall also have supervision and control over the maintenance, inspection, and reuse of alternative onsite sewage systems as they affect the public health and welfare. In discharging the responsibility to supervise and control the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall exercise due diligence to protect the quality of both surface water and ground water. Upon the final adoption of a general Virginia Pollutant Discharge Elimination permit by the State Water Control Board, the Board of Health shall assume the responsibility for permitting alternative discharging sewage systems as defined in § 32.1-163. All such permits shall comply with the applicable regulations of the State Water Control Board and be registered with the State Water Control Board.

In the exercise of its duty to supervise and control the treatment and disposal of sewage, the Board shall require and the Department shall conduct regular inspections of alternative discharging sewage systems. The Board shall also establish requirements for maintenance contracts for alternative discharging sewage systems. The Board may require, as a condition for issuing a permit to operate an alternative discharging sewage system, that the applicant present an executed maintenance contract. Such contract shall be maintained for the life of any general Virginia Pollutant Discharge Elimination System permit issued by the State Water Control Board.

B. The regulations of the Board shall govern the collection, conveyance, transportation, treatment and disposal of sewage by onsite sewage systems and alternative discharging sewage systems and the maintenance, inspection, and reuse of alternative onsite sewage systems. Such regulations shall be designed to protect the public health and promote the public welfare and may include, without limitation:

1. A requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification or operation of a sewerage system or treatment works except in those instances where a permit is required pursuant to Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1.

2. Criteria for the granting or denial of such permits.

3. Standards for the design, construction, installation, modification and operation of sewerage systems and treatment works for permits issued by the Commissioner.

4. Standards governing disposal of sewage on or in soils.

5. Standards specifying the minimum distance between sewerage systems or treatment works and:

a. Public and private wells supplying water for human consumption,

b. Lakes and other impounded waters,

c. Streams and rivers,

d. Shellfish waters,

e. Ground waters,

f. Areas and places of human habitation,

g. Property lines.

6. Standards as to the adequacy of an approved water supply.

7. Standards governing the transportation of sewage.

8. A prohibition against the discharge of untreated sewage onto land or into waters of the Commonwealth.

9. A requirement that such residences, buildings, structures and other places designed for human occupancy as the Board may prescribe be provided with a sewerage system or treatment works.

10. Criteria for determining the demonstrated ability of alternative onsite systems, which are not permitted through the then current sewage handling and disposal regulations, to treat and dispose of sewage as effectively as approved methods.

11. Standards for inspections of and requirements for maintenance contracts for alternative

discharging sewage systems.

12. Notwithstanding the provisions of subdivision 1 above and Chapter 3.1 of Title 62.1, a requirement that the owner obtain a permit from the Commissioner prior to the construction, installation, modification, or operation of an alternative discharging sewage system as defined in § 32.1-163.

13. Criteria for granting, denying, and revoking of permits for alternative discharging sewage systems.

14. Procedures for issuing letters recognizing onsite sewage sites in lieu of issuing onsite sewage system permits.

15. Performance requirements for nitrogen discharged from alternative onsite sewage systems that protect public health and ground and surface water quality.

16. Consideration of the impacts of climate change on proposed treatment works based on research and analysis from the Center for Coastal Resources Management at the Virginia Institute of Marine Science at The College of William and Mary in Virginia.

C. A fee of \$75 shall be charged for filing an application for an onsite sewage system or an alternative discharging sewage system permit with the Department. Funds received in payment of such charges shall be transmitted to the Comptroller for deposit. The funds from the fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this title. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services or when the application is for a pit privy or the repair of a failing onsite sewage system. If the Department denies the permit for land on which the applicant seeks to construct his principal place of residence, then such fee shall be refunded to the applicant.

From such funds as are appropriated to the Department from the special fund, the Board shall apportion a share to local or district health departments to be allocated in the same ratios as provided for the operation of such health departments pursuant to § 32.1-31. Such funds shall be transmitted to the local or district health departments on a quarterly basis.

D. In addition to factors related to the Board's responsibilities for the safe and sanitary treatment and disposal of sewage as they affect the public health and welfare, the Board shall, in establishing standards, give due consideration to economic costs of such standards in accordance with the applicable provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Further a fee of \$75 shall be charged for such installation and monitoring inspections of alternative discharging sewage systems as may be required by the Board. The funds received in payment of such fees shall be credited to a special fund to be appropriated by the General Assembly, as it deems necessary, to the Department for the purpose of carrying out the provisions of this section. However, \$10 of each fee shall be credited to the Onsite Sewage Indemnification Fund established pursuant to § 32.1-164.1:01.

The Board, in its regulations, shall establish a procedure for the waiver of fees for persons whose incomes are below the federal poverty guidelines established by the United States Department of Health and Human Services.

F. Any owner who violates any provision of this section or any regulation of the Board of Health or the State Water Control Board relating to alternative discharging sewage systems or who fails to comply with any order of the Board of Health or any special final order of the State Water Control Board shall be subject to the penalties provided in §§ 32.1-27 and 62.1-44.32.

In the event that a county, city, or town, or its agent, is the owner, the county, city, or town, or its agent may initiate a civil action against any user or users of an alternative discharging sewage system to recover that portion of any civil penalty imposed against the owner which directly resulted from violations by the user or users of any applicable federal, state, or local laws, regulations, or ordinances.

G. The Board shall establish and implement procedures for issuance of letters recognizing the appropriateness of onsite sewage site conditions in lieu of issuing onsite sewage system permits. The Board may require that a survey plat be included with an application for such letter. Such letters shall state, in language determined by the Office of the Attorney General and approved by the Board, the appropriateness of the soil for an onsite sewage system; no system design shall be required for issuance of such letter. The letter may be recorded in the land records of the clerk of the circuit court in the jurisdiction where all or part of the site or proposed site of the onsite sewage system is to be located so as to be a binding notice to the public, including subsequent purchases of the land in question. Upon the sale or transfer of the land which is the subject of any letter, the letter shall be transferred with the title to the property. A permit shall be issued on the basis of such letter unless, from the date of the letter's issuance, there has been a substantial, intervening change in the soil or site conditions where the onsite sewage system is to be located. The Board, Commissioner, and the Department shall accept evaluations from licensed onsite soil evaluators for the issuance of such letters, if they are produced in accordance with the Board's established procedures for issuance of letters. The Department shall issue such letters within 20 working days of the application filing date when evaluations produced by licensed onsite soil

evaluators are submitted as supporting documentation. The Department shall not be required to do a field check of the evaluation prior to issuing such a letter or a permit based on such letter; however, the Department may conduct such field analyses as deemed necessary to protect the integrity of the Commonwealth's environment. Applicants for such letters in lieu of onsite sewage system permits shall pay the fee established by the Board for the letters' issuance and, upon application for an onsite sewage system permit, shall pay the permit application fee.

H. The Board shall establish a program for the operation and maintenance of alternative onsite systems. The program shall require:

1. The owner of an alternative onsite sewage system, as defined in § 32.1-163, to have that system operated by a licensed operator, as defined in § 32.1-163, and visited by the operator as specified in the operation permit;

2. The licensed operator to provide a report on the results of the site visit utilizing the web-based system required by this subsection. A fee of \$1 shall be paid by the licensed operator at the time the report is filed. Such fees shall be credited to the Onsite Operation and Maintenance Fund established pursuant to § 32.1-164.8;

3. A statewide web-based reporting system to track the operation, monitoring, and maintenance requirements of each system, including its components. The system shall have the capability for pre-notification of operation, maintenance, or monitoring to the operator or owner. Licensed operators shall be required to enter their reports onto the system. The Department of Health shall utilize the system to provide for compliance monitoring of operation and maintenance requirements throughout the state. The Commissioner shall consider readily available commercial systems currently utilized within the Commonwealth; and

4. Any additional requirements deemed necessary by the Board.

I. The Board shall promulgate regulations governing the requirements for maintaining alternative onsite sewage systems.

J. The Board shall establish a uniform schedule of civil penalties for violations of (i) regulations promulgated pursuant to subsection B and (ii) *onsite treatment system pump-out requirements promulgated pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) in localities in which compliance with such onsite treatment system pump-out requirements is managed and enforced by the Department* that are not remedied within 30 days after service of notice from the Department. Civil penalties collected pursuant to this chapter shall be credited to the Environmental Health Education and Training Fund established pursuant to § 32.1-248.3.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be not more than \$100 for the initial violation and not more than \$150 for each additional violation. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties exceeding a total of \$3,000. Penalties shall not apply to unoccupied structures which do not contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases. The Department may pursue other remedies as provided by law; however, designation of a particular violation for a civil penalty pursuant to this section shall be in lieu of criminal penalties, except for any violation that contributes to or is likely to contribute to the pollution of public or private water supplies or the contraction or spread of infectious, contagious, or dangerous diseases.

The Department may issue a civil summons ticket as provided by law for a scheduled violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the Department prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court with jurisdiction in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation, the Department shall have the burden of proving by a preponderance of the evidence the liability of the alleged violator. An admission of liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding.

This section shall not be interpreted to allow the imposition of civil penalties for activities related to land development.

K. The Department shall establish procedures for requiring a survey plat as part of an application for a permit or letter for any onsite sewage or alternative discharging sewage system, and for granting waivers for such requirements. In all cases, it shall be the landowner's responsibility to ensure that the system is properly located as permitted.

L. *Effective July 1, 2023, requirements promulgated under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) directly related to compliance with onsite sewage treatment system pump-outs shall be managed and enforced by the Department in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and*

Westmoreland Counties, and the incorporated towns within those counties. Licensed operators conducting onsite sewage treatment system pump-outs pursuant to requirements promulgated under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) in localities managed and enforced by the Department shall provide a report on the results of the site visit using a web-based reporting system developed by the Department. Any person who violates the onsite treatment system pump-out requirements promulgated pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) in a locality in which compliance with such onsite treatment system pump-out requirements is managed and enforced by the Department is guilty of a Class 3 misdemeanor.

§ 62.1-44.15:72. Board to develop criteria.

A. In order to implement the provisions of this article and to assist counties, cities, and towns in regulating the use and development of land and in protecting the quality of state waters, the Board shall promulgate regulations that establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas. The Board shall also promulgate regulations that establish criteria for use by local governments in granting, denying, or modifying requests to rezone, subdivide, or use and develop land in these areas.

B. In developing and amending the criteria, the Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land. The criteria shall incorporate measures such as performance standards, best management practices, and various planning and zoning concepts to protect the quality of state waters while allowing use and development of land consistent with the provisions of this chapter. The criteria adopted by the Board, operating in conjunction with other state water quality programs, shall encourage and promote (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, that might reasonably be expected to inhabit them; (ii) safeguarding of the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; (v) preservation of mature trees or planting of trees as a water quality protection tool and as a means of providing other natural resource benefits; (vi) coastal resilience and adaptation to sea-level rise and climate change; and (vii) promotion of water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the Commonwealth.

C. Prior to the development or amendment of criteria, the Board shall give due consideration to, among other things, the economic and social costs and benefits that can reasonably be expected to obtain as a result of the adoption or amendment of the criteria.

D. In developing such criteria the Board may consult with and obtain the comments of any federal, state, regional, or local agency that has jurisdiction by law or special expertise with respect to the use and development of land or the protection of water. The Board shall give due consideration to the comments submitted by such federal, state, regional, or local agencies.

E. In developing such criteria, the Board shall provide that any locality in a Chesapeake Bay Preservation Area that allows the owner of an ~~on-site~~ onsite sewage treatment system not requiring a Virginia Pollutant Discharge Elimination System permit to submit documentation in lieu of proof of septic tank pump-out shall require such owner to have such documentation certified by an operator or ~~on-site~~ onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 as being qualified to operate, maintain, or design ~~on-site~~ onsite sewage systems.

F. In developing such criteria, the Board shall not require the designation of a Resource Protection Area (RPA) as defined according to the criteria developed by the Board, adjacent to a daylighted stream. However, a locality that elects not to designate an RPA adjacent to a daylighted stream shall use a water quality impact assessment to ensure that proposed development on properties adjacent to the daylighted stream does not result in the degradation of the stream. The water quality impact assessment shall (i) be consistent with the Board's criteria for water quality assessments in RPAs, (ii) identify the impacts of the proposed development on water quality, and (iii) determine specific measures for the mitigation of those impacts. The objective of this assessment is to ensure that practices on properties adjacent to daylighted streams are effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution. The specific content for the water quality impact assessment shall be established and implemented by any locality that chooses not to designate an RPA adjacent to a daylighted stream. Nothing in this subsection shall limit a locality's authority to include a daylighted stream within the extent of an RPA.

G. Effective July 1, 2014, requirements promulgated under this article directly related to compliance with the erosion and sediment control and stormwater management provisions of this chapter and regulated under the authority of those provisions shall cease to have effect.

H. *Effective July 1, 2023, requirements promulgated under this article directly related to compliance with onsite sewage system pump-outs shall be managed and enforced by the Department of Health in Accomack, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland Counties, and the incorporated towns within those counties.*

2. That the Department of Health (the Department) shall provide outreach and education to

homeowners to ensure compliance with onsite sewage treatment system pump-out requirements adopted pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia). The Department shall provide to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health an interim report by December 1, 2024, and a final report by December 1, 2025, on compliance with such onsite sewage treatment system pump-out requirements in the localities specified in subsection L of § 32.1-164 of the Code of Virginia, as amended by this act, and subsection H of § 62.1-44.15:72 of the Code of Virginia, as amended by this act, and the incorporated towns within such localities. Such reports shall also include recommendations to improve compliance with onsite sewage treatment system pump-out requirements adopted pursuant to the Chesapeake Bay Preservation Act.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Melanie D. Davenport
Director, Water Permitting Division

DATE: May 17, 2022

SUBJECT: Regulatory Amendments to Incorporate Changes to the Virginia Stormwater Management Program Regulation (9VAC25-870)
Final Exempt Action – Amendments Conforming to 2022 Legislation

This regulatory amendment to the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) is presented to the State Water Control Board (Board) for your consideration as a final regulation.

During the 2022 Session of the General Assembly, three bills were passed and signed by the Governor requiring amendments to the VSMP Regulation:

1. Senate Bill (SB) 657 limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations and transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality.
2. House Bill (HB) 1224 directs the State Water Control Board to update its regulations providing for the certification and use of a proprietary best management practice (BMP) if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and its having met or exceeded all of such program's established test protocol requirements. This bill included an emergency enactment clause making it effective from the date of the Governor's signature on April 1, 2022.

3. HB 184 authorizes a locality that administers a Virginia Stormwater Management Program (VSMP) or a Virginia Erosion and Stormwater Management Program (VESMP) to administer such program of a regional industrial facility authority of which the locality is a member. This administration is to be conducted in accordance with an agreement entered into by relevant localities and the existing VSMP or VESMP for the property.

This final regulatory action will amend this Virginia Stormwater Management Program Regulation to incorporate changes made by Chapter 356 (SB 657), Chapter 32 (HB1224), and Chapter 160 (HB184) of the 2022 Acts of Assembly of the General Assembly.

At your Board meeting scheduled for June 22, 2022, the Department will request that the Board adopt these amendments as final regulations, authorize their publication, and affirm that the Board will receive, consider and respond to petitions by any interested persons at any time with respect to reconsiderations or revision.

cc: Melissa Porterfield, Office of Regulatory Affairs

ATTACHMENTS:

- Draft Virginia Regulatory Town Hall Documents (TH-09)
 - Revisions to CH 870 in response to SB 657, HB 1224, and HB 184 (2022 GA Session)
- Chapter 356 of the Virginia Acts of Assembly of the 2022 General Assembly
 - SB 657
- Chapter 32 of the Virginia Acts of Assembly of the 2022 General Assembly
 - HB 1224
- Chapter 160 of the Virginia Acts of Assembly of the 2022 General Assembly
- Final Exempt – GA2022 Amended Regulatory Text
 - 9VAC25-870 – RIS PROJECT 7174

1 **Project 7174 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt - CH870 amendments for HB1224 and 2022 Board bill (2022 GA session)**
4 **9VAC25-870-10. Definitions.**

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

7 "Act" means the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of
8 Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

11 "Agreement in lieu of a stormwater management plan" means a contract between the VSMP
12 authority and the owner or permittee that specifies methods that shall be implemented to comply
13 with the requirements of a VSMP for the construction of a single-family residence; such contract
14 may be executed by the VSMP authority in lieu of a stormwater management plan.

15 "Applicable standards and limitations" means all state, interstate, and federal standards and
16 limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA)
17 (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards,
18 standards of performance, toxic effluent standards or prohibitions, best management practices,
19 and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308,
20 403, and 405 of CWA.

21 "Approval authority" means the State Water Control Board or its designee.

22 "Approved program" or "approved state" means a state or interstate program that has been
23 approved or authorized by EPA under 40 CFR Part 123.

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

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

30 "Best management practice" or "BMP" means schedules of activities, prohibitions of practices,
31 maintenance procedures, and other management practices, including both structural and
32 nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater
33 systems. This includes:

34 1. "Nonproprietary best management practice" means both structural and nonstructural
35 practices to prevent or reduce the pollution of surface waters and groundwater systems
36 that are in the public domain and are not protected by trademark or patent or copyright.

37 2. "Proprietary best management practice" means both structural and nonstructural
38 practices to prevent or reduce the pollution of surface waters and groundwater systems
39 that are privately owned and controlled and may be protected by trademark or patent or
40 copyright.

41 "Board" means the State Water Control Board. However, when used outside the context of
42 the promulgation of regulations, including regulations to establish general permits, "board" means
43 the "Department of Environmental Quality."

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

46 "Channel" means a natural or manmade waterway.

47 "Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter
48 3.1 of Title 62.1 of the Code of Virginia.

49 "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity
50 including clearing, grading, or excavation that results in a land disturbance equal to or greater
51 than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject
52 to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-
53 830) adopted pursuant to the Chesapeake Bay Preservation Act.

54 "Chesapeake Bay Preservation Area" means any land designated by a local government
55 pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area
56 Designation and Management Regulations and § 62.1-44.15:74 of the Chesapeake Bay
57 Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection
58 Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area
59 Designation and Management Regulations (9VAC25-830).

60 "Chesapeake Bay watershed" means all land areas draining to the following Virginia river
61 basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay
62 and its small coastal basins, and York River Basin.

63 "Common plan of development or sale" means a contiguous area where separate and distinct
64 construction activities may be taking place at different times on different schedules.

65 "Comprehensive stormwater management plan" means a plan, which may be integrated with
66 other land use plans or regulations, that specifies how the water quality components, quantity
67 components, or both of stormwater are to be managed on the basis of an entire watershed or a
68 portion thereof. The plan may also provide for the remediation of erosion, flooding, and water
69 quality and quantity problems caused by prior development.

70 "Construction activity" means any clearing, grading, or excavation associated with large
71 construction activity or associated with small construction activity.

72 "Contiguous zone" means the entire zone established by the United States under Article 24
73 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

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

77 "Control measure" means any BMP, stormwater facility, or other method used to minimize the
78 discharge of pollutants to state waters.

79 "Controversial permit" means a water permitting action for which a public hearing has been
80 granted pursuant to 9VAC25-870-550 and 9VAC25-870-555.

81 "Co-operator" means an operator of a state permit that is only responsible for state permit
82 conditions relating to the discharge for which it is the operator.

83 "Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),
84 formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control
85 Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-
86 576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

87 "CWA and regulations" means the Clean Water Act (CWA) and applicable regulations
88 published in the Code of Federal Regulations promulgated thereunder. For the purposes of this
89 chapter, it includes state program requirements.

90 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any
91 24-hour period that reasonably represents the calendar day for purposes of sampling. For
92 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total

93 mass of the pollutant discharged over the day. For pollutants with limitations expressed in other
94 units of measurement, the daily discharge is calculated as the average measurement of the
95 pollutant over the day.

96 "Department" means the Department of Environmental Quality.

97 "Development" means land disturbance and the resulting landform associated with the
98 construction of residential, commercial, industrial, institutional, recreation, transportation, or utility
99 facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The
100 regulation of discharges from development, for purposes of this chapter, does not include the
101 exemptions found in 9VAC25-870-300.

102 "Direct discharge" means the discharge of a pollutant.

103 "Director" means the Director of the Department of Environmental Quality or his designee.

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

105 "Discharge of a pollutant" means:

106 1. Any addition of any pollutant or combination of pollutants to state waters from any point
107 source; or

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

111 This definition includes additions of pollutants into surface waters from: surface runoff that is
112 collected or channeled by man; discharges through pipes, sewers, or other conveyances owned
113 by a state, municipality, or other person that do not lead to a treatment works; and discharges
114 through pipes, sewers, or other conveyances, leading into privately owned treatment works. This
115 term does not include an addition of pollutants by any indirect discharger.

116 "Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an
117 equivalent form developed by the operator and approved by the ~~board~~ department, for the
118 reporting of self-monitoring results by operators.

119 "Draft state permit" means a document indicating the ~~board's~~ department's tentative decision
120 to issue or deny, modify, revoke and reissue, terminate, or reissue a state individual or general
121 permit. A notice of intent to deny a state individual or general permit is a type of draft state permit.
122 A denial of a request for modification, revocation and reissuance, or termination is not a draft state
123 permit.

124 "Drainage area" means a land area, water area, or both from which runoff flows to a common
125 point.

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

129 "Effluent limitations guidelines" means a regulation published by the administrator under §
130 304(b) of the CWA to adopt or revise effluent limitations.

131 "Environmental Protection Agency" or "EPA" means the United States Environmental
132 Protection Agency.

133 "Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter
134 3.1 of Title 62.1 of the Code of Virginia.

135 "ESC" means erosion and sediment control.

136 "Existing state permit" means for the purposes of this chapter a state permit issued by the
137 ~~board~~ department and currently held by a state permit applicant.

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

139 "Facilities or equipment" means buildings, structures, process or production equipment or
140 machinery that form a permanent part of a new source and that will be used in its operation, if
141 these facilities or equipment are of such value as to represent a substantial commitment to
142 construct. It excludes facilities or equipment used in connection with feasibility, engineering, and
143 design studies regarding the new source or water pollution treatment for the new source.

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

147 "Flood fringe" means the portion of the floodplain outside the floodway that is usually covered
148 with water from the 100-year flood or storm event. This includes the flood or floodway fringe
149 designated by the Federal Emergency Management Agency.

150 "Flooding" means a volume of water that is too great to be confined within the banks or walls
151 of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby
152 causing or threatening damage.

153 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is
154 susceptible to being inundated by water normally associated with the 100-year flood or storm
155 event. This includes the floodplain designated by the Federal Emergency Management Agency.

156 "Flood-prone area" means the component of a natural or restored stormwater conveyance
157 system that is outside the main channel. Flood-prone areas may include the floodplain, the
158 floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

159 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,
160 usually associated with flowing water, that must be reserved in order to discharge the 100-year
161 flood or storm event without cumulatively increasing the water surface elevation more than one
162 foot. This includes the floodway designated by the Federal Emergency Management Agency.

163 "General permit" means a state permit authorizing a category of discharges under the CWA
164 and the Act within a geographical area.

165 "Hazardous substance" means any substance designated under the Code of Virginia or 40
166 CFR Part 116 pursuant to § 311 of the CWA.

167 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent
168 version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified
169 as another order.

170 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not
171 composed entirely of stormwater, except discharges pursuant to a separate VPDES or state
172 permit (other than the state permit for discharges from the municipal separate storm sewer),
173 discharges resulting from firefighting activities, and discharges identified by and in compliance
174 with 9VAC25-870-400 D 2 c (3).

175 "Impervious cover" means a surface composed of material that significantly impedes or
176 prevents natural infiltration of water into soil.

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

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

185 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly
186 owned treatment works (POTW)."

187 "Inspection" means an on-site review of the project's compliance with the permit or the state
188 permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information
189 or conduct surveys or investigations necessary in the implementation or enforcement of the Act
190 and this chapter.

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

195 "Karst area" means any land area predominantly underlain at the surface or shallow
196 subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface
197 karst features.

198 "Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and
199 other such landscape features found in karst areas.

200 "Land disturbance" or "land-disturbing activity" means a manmade change to the land surface
201 that potentially changes its runoff characteristics including clearing, grading, or excavation, except
202 that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of
203 Virginia.

204 "Large construction activity" means construction activity including clearing, grading, and
205 excavation, except operations that result in the disturbance of less than five acres of total land
206 area. Large construction activity also includes the disturbance of less than five acres of total land
207 area that is a part of a larger common plan of development or sale if the larger common plan will
208 ultimately disturb five acres or more. Large construction activity does not include routine
209 maintenance that is performed to maintain the original line and grade, hydraulic capacity, or
210 original purpose of the facility.

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

- 213 1. Located in an incorporated place with a population of 250,000 or more as determined
214 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);
- 215 2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal
216 separate storm sewers that are located in the incorporated places, townships or towns
217 within such counties;
- 218 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
219 of this definition and that are designated by the ~~board~~ department as part of the large or
220 medium municipal separate storm sewer system due to the interrelationship between the
221 discharges of the designated storm sewer and the discharges from municipal separate
222 storm sewers described under subdivision 1 or 2 of this definition. In making this
223 determination the ~~board~~ department may consider the following factors:
 - 224 a. Physical interconnections between the municipal separate storm sewers;
 - 225 b. The location of discharges from the designated municipal separate storm sewer
226 relative to discharges from municipal separate storm sewers described in subdivision
227 1 of this definition;
 - 228 c. The quantity and nature of pollutants discharged to surface waters;
 - 229 d. The nature of the receiving surface waters; and
 - 230 e. Other relevant factors;

231 4. The ~~board~~ department may, upon petition, designate as a large municipal separate
232 storm sewer system, municipal separate storm sewers located within the boundaries of a
233 region defined by a stormwater management regional authority based on a jurisdictional,
234 watershed, or other appropriate basis that includes one or more of the systems described
235 in this definition.

236 "Layout" means a conceptual drawing sufficient to provide for the specified stormwater
237 management facilities required at the time of approval.

238 "Linear development project" means a land-disturbing activity that is linear in nature such as,
239 but not limited to, (i) the construction of electric and telephone utility lines, and natural gas
240 pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other
241 related structures of a railroad company; (iii) highway construction projects; (iv) construction of
242 stormwater channels and stream restoration activities; and (v) water and sewer lines. Private
243 subdivision roads or streets shall not be considered linear development projects.

244 "Locality" means a county, city, or town.

245 "Localized flooding" means smaller scale flooding that may occur outside of a stormwater
246 conveyance system. This may include high water, ponding, or standing water from stormwater
247 runoff, which is likely to cause property damage or unsafe conditions.

248 "Main channel" means the portion of the stormwater conveyance system that contains the
249 base flow and small frequent storm events.

250 "Major facility" means any facility or activity classified as such by the regional administrator in
251 conjunction with the ~~board~~ department.

252 "Major modification" means, for the purposes of this chapter, the modification or amendment
253 of an existing state permit before its expiration that is not a minor modification as defined in this
254 regulation.

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

263 "Manmade" means constructed by man.

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

265 "Maximum extent practicable" or "MEP" means the technology-based discharge standard for
266 municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part,
267 by selecting and implementing effective structural and nonstructural best management practices
268 (BMPs) and rejecting ineffective BMPs and replacing them with effective best management
269 practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff
270 management knowledge increases. As such, the operator's MS4 program must continually be
271 assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain
272 compliance with water quality standards.

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

275 1. Located in an incorporated place with a population of 100,000 or more but less than
276 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR
277 Part 122 Appendix G);

278 2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate
 279 storm sewers that are located in the incorporated places, townships or towns within such
 280 counties;

281 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
 282 of this definition and that are designated by the board department as part of the large or
 283 medium municipal separate storm sewer system due to the interrelationship between the
 284 discharges of the designated storm sewer and the discharges from municipal separate
 285 storm sewers described under subdivision 1 or 2 of this definition. In making this
 286 determination the board department may consider the following factors:

- 287 a. Physical interconnections between the municipal separate storm sewers;
- 288 b. The location of discharges from the designated municipal separate storm sewer
 289 relative to discharges from municipal separate storm sewers described in subdivision
 290 1 of this definition;
- 291 c. The quantity and nature of pollutants discharged to surface waters;
- 292 d. The nature of the receiving surface waters; or
- 293 e. Other relevant factors;

294 4. The board department may, upon petition, designate as a medium municipal separate
 295 storm sewer system, municipal separate storm sewers located within the boundaries of a
 296 region defined by a stormwater management regional authority based on a jurisdictional,
 297 watershed, or other appropriate basis that includes one or more of the systems described
 298 in subdivisions 1, 2, and 3 of this definition.

299 "Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable
 300 using stormwater controls that are technologically available and economically practicable.

301 "Minor modification" means, for the purposes of this chapter, minor modification or
 302 amendment of an existing state permit before its expiration for the reasons listed at 40 CFR
 303 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter
 304 also means other modifications and amendments not requiring extensive review and evaluation
 305 including changes in EPA promulgated test protocols, increasing monitoring frequency
 306 requirements, changes in sampling locations, and changes to compliance dates within the overall
 307 compliance schedules. A minor state permit modification or amendment does not substantially
 308 alter state permit conditions, substantially increase or decrease the amount of surface water
 309 impacts, increase the size of the operation, or reduce the capacity of the facility to protect human
 310 health or the environment.

311 "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise
 312 known as a municipal separate storm sewer system, including roads with drainage systems,
 313 municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

- 314 1. Owned or operated by a federal, state, city, town, county, district, association, or other
 315 public body, created by or pursuant to state law, having jurisdiction or delegated authority
 316 for erosion and sediment control and stormwater management, or a designated and
 317 approved management agency under § 208 of the CWA that discharges to surface waters;
- 318 2. Designed or used for collecting or conveying stormwater;
- 319 3. That is not a combined sewer; and
- 320 4. That is not part of a publicly owned treatment works.

321 "Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are
 322 defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated
 323 under 9VAC25-870-380 A 1.

324 "Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means
 325 a management program covering the duration of a state permit for a municipal separate storm
 326 sewer system that includes a comprehensive planning process that involves public participation
 327 and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent
 328 practicable, to protect water quality, and to satisfy the appropriate water quality requirements of
 329 the CWA and regulations and the Act and attendant regulations, using management practices,
 330 control techniques, and system, design and engineering methods, and such other provisions that
 331 are appropriate.

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

336 "National Pollutant Discharge Elimination System" or "NPDES" means the national program
 337 for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits,
 338 and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the
 339 CWA. The term includes an approved program.

340 "Natural channel design concepts" means the utilization of engineering analysis based on
 341 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance
 342 system for the purpose of creating or recreating a stream that conveys its bankfull storm event
 343 within its banks and allows larger flows to access its floodplain.

344 "Natural stream" means a tidal or nontidal watercourse that is part of the natural topography.
 345 It usually maintains a continuous or seasonal flow during the year and is characterized as being
 346 irregular in cross-section with a meandering course. Constructed channels such as drainage
 347 ditches or swales shall not be considered natural streams; however, channels designed utilizing
 348 natural channel design concepts may be considered natural streams.

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

- 350 1. From which there is or may be a discharge of pollutants;
- 351 2. That did not commence the discharge of pollutants at a particular site prior to August
- 352 13, 1979;
- 353 3. Which is not a new source; and
- 354 4. Which has never received a finally effective separate VPDES or state permit for
- 355 discharges at that site.

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

363 "New permit" means, for the purposes of this chapter, a state permit issued by the board
 364 department to a state permit applicant that does not currently hold and has never held a state
 365 permit of that type, for that activity, at that location. An application for a new permit issued pursuant
 366 to this chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-
 367 44.15:4 D of the Code of Virginia.

368 "New source," means any building, structure, facility, or installation from which there is or may
 369 be a discharge of pollutants, the construction of which commenced:

- 370 1. After promulgation of standards of performance under § 306 of the CWA that are
- 371 applicable to such source; or

372 2. After proposal of standards of performance in accordance with § 306 of the CWA that
373 are applicable to such source, but only if the standards are promulgated in accordance
374 with § 306 of the CWA within 120 days of their proposal.

375 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous,
376 hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are
377 washed from the land surface in a diffuse manner by stormwater runoff.

378 "Oil and gas exploration, production, processing, or treatment operations or transmission
379 facilities" means all field activities or operations associated with exploration, production, or
380 treatment operations, or transmission facilities, including activities necessary to prepare a site for
381 drilling and for the movement and placement of drilling equipment, whether or not such field
382 activities or operations may be considered to be construction activity. (33 USC § 1362(24))

383 "Operator" means the owner or operator of any facility or activity subject to the Act and this
384 chapter. In the context of stormwater associated with a large or small construction activity,
385 operator means any person associated with a construction project that meets either of the
386 following two criteria: (i) the person has direct operational control over construction plans and
387 specifications, including the ability to make modifications to those plans and specifications or (ii)
388 the person has day-to-day operational control of those activities at a project that are necessary to
389 ensure compliance with a stormwater pollution prevention plan for the site or other state permit
390 or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry
391 out activities required by the stormwater pollution prevention plan or comply with other permit
392 conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer
393 Systems (MS4s), operator means the operator of the regulated MS4 system.

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

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

402 "Owner" means the Commonwealth or any of its political subdivisions including sanitation
403 district commissions and authorities, and any public or private institution, corporation, association,
404 firm or company organized or existing under the laws of this or any other state or country, or any
405 officer or agency of the United States, or any person or group of persons acting individually or as
406 a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible
407 for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to
408 state waters, or any facility or operation that has the capability to alter the physical, chemical, or
409 biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the
410 Act and this chapter.

411 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a
412 particular location.

413 "Percent impervious" means the impervious area within the site divided by the area of the site
414 multiplied by 100.

415 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity
416 issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general
417 permit coverage has been provided where applicable.

418 "Permittee" means the person to whom the state permit or VSMP authority permit is issued,
 419 including any owner or operator whose construction site is covered under a state construction
 420 general permit.

421 "Person" means any individual, corporation, partnership, association, state, municipality,
 422 commission, or political subdivision of a state, governmental body, including a federal, state, or
 423 local entity as applicable, any interstate body or any other legal entity.

424 "Point of discharge" means a location at which concentrated stormwater runoff is released.

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

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

- 435 1. Sewage from vessels; or
- 436 2. Water, gas, or other material that is injected into a well to facilitate production of oil or
- 437 gas, or water derived in association with oil and gas production and disposed of in a well
- 438 if the well used either to facilitate production or for disposal purposes is approved by the
- 439 board department and if the board department determines that the injection or disposal
- 440 will not result in the degradation of groundwater or surface water resources.

441 "Pollutant discharge" means the average amount of a particular pollutant measured in pounds
 442 per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

443 "Pollution" means such alteration of the physical, chemical, or biological properties of any
 444 state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental
 445 or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life;
 446 (b) unsuitable with reasonable treatment for use as present or possible future sources of public
 447 water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other
 448 reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of
 449 state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters
 450 by any owner which by itself is not sufficient to cause pollution, but which, in combination with
 451 such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause
 452 pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)
 453 contributing to the contravention of standards of water quality duly established by the State Water
 454 Control Board, are "pollution" for the terms and purposes of this chapter.

455 "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to
 456 exist after completion of the land development activity on a specific site.

457 "Predevelopment" refers to the conditions that exist at the time that plans for the land
 458 development of a tract of land are submitted to the VSMP authority. Where phased development
 459 or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities,
 460 etc.), the existing conditions at the time prior to the first item being submitted shall establish
 461 predevelopment conditions.

462 "Prior developed lands" means land that has been previously utilized for residential,
 463 commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and
 464 that will have the impervious areas associated with those uses altered during a land-disturbing
 465 activity.

466 "Privately owned treatment works" or "PVOTW" means any device or system that is (i) used
467 to treat wastes from any facility whose operator is not the operator of the treatment works and (ii)
468 not a POTW.

469 "Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212
470 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This
471 definition includes any devices and systems used in the storage, treatment, recycling, and
472 reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers,
473 pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The
474 term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the
475 indirect discharges to and the discharges from such a treatment works.

476 "Qualified personnel" means a person knowledgeable in the principles and practices of
477 erosion and sediment and stormwater management controls who possesses the skills to assess
478 conditions at the construction site for the operator that could impact stormwater quality and
479 quantity and to assess the effectiveness of any sediment and erosion control measures or
480 stormwater management facilities selected to control the quality and quantity of stormwater
481 discharges from the construction activity. For VSMP authorities this requires the use of a person
482 who holds a certificate of competency from the ~~board~~ department in the area of project inspection
483 for ESC and project inspection for SWM or combined administrator for ESC and combined
484 administrator for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM
485 qualifications from these two areas.

486 "Recommencing discharger" means a source that recommences discharge after terminating
487 operations.

488 "Regional administrator" means the Regional Administrator of Region III of the Environmental
489 Protection Agency or the authorized representative of the regional administrator.

490 "Revoked state permit" means, for the purposes of this chapter, an existing state permit that
491 is terminated by the ~~board~~ department before its expiration.

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

494 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across
495 the land surface or through conveyances to one or more waterways.

496 "Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

497 "Runoff volume" means the volume of water that runs off the site from a prescribed design
498 storm.

499 "Rural Tidewater locality" means any locality that is (i) subject to the provisions of the
500 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii) eligible
501 to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76
502 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

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

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

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

511 "Significant materials" means, but is not limited to: raw materials; fuels; materials such as
512 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw

513 materials used in food processing or production; hazardous substances designated under §
 514 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant
 515 to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as
 516 ashes, slag, and sludge that have the potential to be released with stormwater discharges.

517 "Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term
 518 county includes incorporated towns which are part of the county.

519 "Site" means the land or water area where any facility or land-disturbing activity is physically
 520 located or conducted, including adjacent land used or preserved in connection with the facility or
 521 land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be
 522 considered part of a site.

523 "Site hydrology" means the movement of water on, across, through, and off the site as
 524 determined by parameters including soil types, soil permeability, vegetative cover, seasonal water
 525 tables, slopes, land cover, and impervious cover.

526 "Small construction activity" means:

527 1. Construction activities including clearing, grading, and excavating that results in land
 528 disturbance of equal to or greater than one acre and less than five acres. Small
 529 construction activity also includes the disturbance of less than one acre of total land area
 530 that is part of a larger common plan of development or sale if the larger common plan will
 531 ultimately disturb equal to or greater than one and less than five acres. Small construction
 532 activity does not include routine maintenance that is performed to maintain the original line
 533 and grade, hydraulic capacity, or original purpose of the facility. The ~~board~~ department
 534 may waive the otherwise applicable requirements in a general permit for a stormwater
 535 discharge from construction activities that disturb less than five acres where stormwater
 536 controls are not needed based on an approved "total maximum daily load" (TMDL) that
 537 addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs,
 538 an equivalent analysis that determines allocations for small construction sites for the
 539 pollutants of concern or that determines that such allocations are not needed to protect
 540 water quality based on consideration of existing in-stream concentrations, expected
 541 growth in pollutant contributions from all sources, and a margin of safety. For the purpose
 542 of this subdivision, the pollutants of concern include sediment or a parameter that
 543 addresses sediment (such as total suspended solids, turbidity, or siltation) and any other
 544 pollutant that has been identified as a cause of impairment of any water body that will
 545 receive a discharge from the construction activity. The operator must certify to the ~~board~~
 546 department that the construction activity will take place, and stormwater discharges will
 547 occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the
 548 start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the
 549 waiver shall be submitted electronically by the owner or operator to the department in
 550 compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part
 551 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia
 552 Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-
 553 31 is not intended to undo existing requirements for electronic reporting. Prior to this date,
 554 and independent of Part XI of 9VAC25-31, permittees may be required to report
 555 electronically if specified by a particular permit.

556 2. Any other construction activity designated by either the ~~board~~ department or the EPA
 557 regional administrator, based on the potential for contribution to a violation of a water
 558 quality standard or for significant contribution of pollutants to surface waters.

559 "Small municipal separate storm sewer system" or "small MS4" means all separate storm
 560 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,
 561 parish, district, association, or other public body (created by or pursuant to state law) having

562 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including
 563 special districts under state law such as a sewer district, flood control district or drainage district,
 564 or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and
 565 approved management agency under § 208 of the CWA that discharges to surface waters and
 566 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated
 567 under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems
 568 in municipalities, such as systems at military bases, large hospital or prison complexes, and
 569 highway and other thoroughfares. The term does not include separate storm sewers in very
 570 discrete areas, such as individual buildings.

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

573 "State" means the Commonwealth of Virginia.

574 "State application" or "application" means the standard form or forms, including any additions,
 575 revisions, or modifications to the forms, approved by the administrator and the board department
 576 for applying for a state permit.

577 "State/EPA agreement" means an agreement between the EPA regional administrator and
 578 the state that coordinates EPA and state activities, responsibilities, and programs including those
 579 under the CWA and the Act.

580 "State permit" means an approval to conduct a land-disturbing activity issued by the board
 581 department in the form of a state stormwater individual permit or coverage issued under a state
 582 general permit or an approval issued by the board department for stormwater discharges from an
 583 MS4. Under these state permits, the Commonwealth imposes and enforces requirements
 584 pursuant to the federal Clean Water Act and regulations, the Act, and this chapter. As the
 585 mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and
 586 regulations, a state permit for stormwater discharges from an MS4 and, after June 30, 2014, a
 587 state permit for conducting a land-disturbing activity issued pursuant to the Act, are also types of
 588 Virginia Pollutant Discharge Elimination System (VPDES) Permits. State permit does not include
 589 any state permit that has not yet been the subject of final board department action, such as a draft
 590 state permit. Approvals issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not
 591 issuances of a permit under § 62.1-44.15.01 of the Code of Virginia.

592 "State project" means any land development project that is undertaken by any state agency,
 593 board, commission, authority, or any branch of state government, including state-supported
 594 institutions of higher learning.

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

597 "State waters" means all water, on the surface and under the ground, wholly or partially within
 598 or bordering the Commonwealth or within its jurisdiction, including wetlands.

599 "Stormwater" means precipitation that is discharged across the land surface or through
 600 conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff,
 601 and surface runoff and drainage.

602 "Stormwater conveyance system" means a combination of drainage components that are
 603 used to convey stormwater discharge, either within or downstream of the land-disturbing activity.
 604 This includes:

605 1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or
 606 other stormwater conveyance system constructed by man except for restored stormwater
 607 conveyance systems;

608 2. "Natural stormwater conveyance system" means the main channel of a natural stream
 609 and the flood-prone area adjacent to the main channel; or

610 3. "Restored stormwater conveyance system" means a stormwater conveyance system
 611 that has been designed and constructed using natural channel design concepts. Restored
 612 stormwater conveyance systems include the main channel and the flood-prone area
 613 adjacent to the main channel.

614 "Stormwater discharge associated with construction activity" means a discharge of
 615 stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or
 616 excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow
 617 area, concrete truck washout, fueling); or other industrial stormwater directly related to the
 618 construction process (e.g., concrete or asphalt batch plants) are located.

619 "Stormwater discharge associated with large construction activity" means the discharge of
 620 stormwater from large construction activities.

621 "Stormwater discharge associated with small construction activity" means the discharge of
 622 stormwater from small construction activities.

623 "Stormwater management facility" means a control measure that controls stormwater runoff
 624 and changes the characteristics of that runoff including the quantity and quality, the period of
 625 release or the velocity of flow.

626 "Stormwater management plan" means a document containing material for describing
 627 methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu
 628 of a stormwater management plan as defined in this chapter shall be considered to meet the
 629 requirements of a stormwater management plan.

630 "Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in
 631 accordance with good engineering practices and that identifies potential sources of pollutants that
 632 may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required
 633 under a VSMP for construction activities shall identify and require the implementation of control
 634 measures and shall include or incorporate by reference an approved erosion and sediment control
 635 plan, an approved stormwater management plan, and a pollution prevention plan.

636 "Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

637 "Surface waters" means:

- 638 1. All waters that are currently used, were used in the past, or may be susceptible to use
 639 in interstate or foreign commerce, including all waters that are subject to the ebb and flow
 640 of the tide;
- 641 2. All interstate waters, including interstate wetlands;
- 642 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),
 643 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or
 644 natural ponds the use, degradation, or destruction of which would affect or could affect
 645 interstate or foreign commerce including any such waters:
 - 646 a. That are or could be used by interstate or foreign travelers for recreational or other
 647 purposes;
 - 648 b. From which fish or shellfish are or could be taken and sold in interstate or foreign
 649 commerce; or
 - 650 c. That are used or could be used for industrial purposes by industries in interstate
 651 commerce;
- 652 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 653 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 654 6. The territorial sea; and

655 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified
656 in subdivisions 1 through 6 of this definition.

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

662 "SWM" means stormwater management.

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

665 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations
666 for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a
667 margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other
668 appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

669 "TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take
670 to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action
671 plans may be implemented in multiple phases over more than one state permit cycle.

672 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the
673 case of sludge use or disposal practices, any pollutant identified in regulations implementing §
674 405(d) of the CWA.

675 "Upset" means an exceptional incident in which there is unintentional and temporary
676 noncompliance with technology based state permit effluent limitations because of factors beyond
677 the reasonable control of the operator. An upset does not include noncompliance to the extent
678 caused by operational error, improperly designed treatment facilities, inadequate treatment
679 facilities, lack of preventive maintenance, or careless or improper operation.

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

685 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by
686 the ~~board~~ department that has been established by a VESCP authority for the effective control of
687 soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing
688 activity to prevent the unreasonable degradation of properties, stream channels, waters, and other
689 natural resources and shall include such items where applicable as local ordinances, rules, permit
690 requirements, annual standards and specifications, policies and guidelines, technical materials,
691 and requirements for plan review, inspection, enforcement where authorized in the Erosion and
692 Sediment Control Act and its attendant regulations, and evaluation consistent with the
693 requirements of the Erosion and Sediment Control Act and its attendant regulations.

694 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an
695 authority approved by the ~~board~~ department to operate a Virginia Erosion and Sediment Control
696 Program. An authority may include a state entity, including the department; a federal entity; a
697 district, county, city, or town; or for linear projects subject to annual standards and specifications,
698 electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline
699 companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of
700 Virginia.

701 "Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means
702 a document issued by the ~~State Water Control Board~~ department pursuant to the State Water

703 Control Law authorizing, under prescribed conditions, the potential or actual discharge of
704 pollutants from a point source to surface waters.

705 "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter
706 3.1 of Title 62.1 of the Code of Virginia.

707 "Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed
708 design standards and specifications for control measures that may be used in Virginia to comply
709 with the requirements of the Virginia Stormwater Management Act and associated regulations.

710 "Virginia Stormwater Management Handbook" means a collection of pertinent information that
711 provides general guidance for compliance with the Act and associated regulations and is
712 developed by the department with advice from a stakeholder advisory committee.

713 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the
714 ~~board~~ department after September 13, 2011, that has been established by a VSMP authority to
715 manage the quality and quantity of runoff resulting from land-disturbing activities and shall include
716 such items as local ordinances, rules, permit requirements, annual standards and specifications,
717 policies and guidelines, technical materials, and requirements for plan review, inspection,
718 enforcement, where authorized in the Act and associated regulations, and evaluation consistent
719 with the requirements of the SWM Act and associated regulations.

720 "VSMP authority" means an authority approved by the ~~board~~ department after September 13,
721 2011, to operate a Virginia Stormwater Management Program or the department. An authority
722 may include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including
723 the department; federal entity; or, for linear projects subject to annual standards and specifications
724 in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas,
725 and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad
726 companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to
727 approval, the ~~board~~ department must find that the ordinances adopted by the locality's VSMP
728 authority are consistent with the Act and this chapter including the General Permit for Discharges
729 of Stormwater from Construction Activities (9VAC25-880).

730 "Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface
731 water's loading or assimilative capacity allocated to one of its existing or future point sources of
732 pollution. WLAs are a type of water quality-based effluent limitation.

733 "Water quality standards" or "WQS" means provisions of state or federal law that consist of a
734 designated use or uses for the waters of the Commonwealth and water quality criteria for such
735 waters based on such uses. Water quality standards are to protect the public health or welfare,
736 enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2
737 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the
738 CWA (33 USC § 1251 et seq.).

739 "Water quantity technical criteria" means standards that establish minimum design criteria for
740 measures to control localized flooding and stream channel erosion.

741 "Watershed" means a defined land area drained by a river or stream, karst system, or system
742 of connecting rivers or streams such that all surface water within the area flows through a single
743 outlet. In karst areas, the karst feature to which the water drains may be considered the single
744 outlet for the watershed.

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

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

751 9VAC25-870-20. Purposes.

752 The purposes of this chapter are to provide a framework for the administration, implementation
 753 and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the
 754 procedures and requirements to be followed in connection with state permits issued by the ~~board~~
 755 department pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management
 756 Act and permits issued by a VSMP authority, while at the same time providing flexibility for
 757 innovative solutions to stormwater management issues. The chapter also establishes the ~~board's~~
 758 department's procedures for the authorization of a VSMP, the ~~board's~~ department's procedures
 759 for approving the administration of a VSMP by a VSMP authority, ~~board~~ and department oversight
 760 authorities for a VSMP, and the required technical criteria for stormwater management for land-
 761 disturbing activities.

762 9VAC25-870-45. Implementation date.

763 The technical criteria in Part II A and Part II B shall be implemented by a VSMP authority when
 764 a General Permit for Discharges of Stormwater from Construction Activities has been issued that
 765 incorporates such criteria. Until that time, the required technical criteria shall be found in Part II
 766 C. VSMPs adopted in accordance with the Act and this chapter shall become effective July 1,
 767 2014, unless otherwise specified by the ~~board~~ department.

768 9VAC25-870-62. Applicability.

769 In accordance with the board's authority and except as provided in 9VAC25-870-48, this part
 770 establishes the minimum technical criteria that shall be employed by a state agency in accordance
 771 with an implementation schedule set by the board, or by a VSMP authority that has been approved
 772 by the board prior to July 1, 2022, or the department thereafter, to protect the quality and quantity
 773 of state waters from the potential harm of unmanaged stormwater runoff resulting from land-
 774 disturbing activities.

775 9VAC25-870-65. Water quality compliance.

776 A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of
 777 9VAC25-870-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another
 778 equivalent methodology that is approved by the ~~board~~ department.

779 B. The nonproprietary BMPs listed in this subsection are approved for use in accordance with
 780 the Virginia Runoff Reduction Method. Other approved nonproprietary BMPs found on the Virginia
 781 Stormwater BMP Clearinghouse Website may also be utilized. Design specifications and the
 782 pollutant removal efficiencies for all approved nonproprietary BMPs are found on the Virginia
 783 Stormwater BMP Clearinghouse Website.

- 784 1. Vegetated Roof (Version 2.3, March 1, 2011);
- 785 2. Rooftop Disconnection (Version 1.9, March 1, 2011);
- 786 3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
- 787 4. Soil Amendments (Version 1.8, March 1, 2011);
- 788 5. Permeable Pavement (Version 1.8, March 1, 2011);
- 789 6. Grass Channel (Version 1.9, March 1, 2011);
- 790 7. Bioretention (Version 1.9, March 1, 2011);
- 791 8. Infiltration (Version 1.9, March 1, 2011);
- 792 9. Dry Swale (Version 1.9, March 1, 2011);
- 793 10. Wet Swale (Version 1.9, March 1, 2011);
- 794 11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);
- 795 12. Extended Detention Pond (Version 1.9, March 1, 2011);
- 796 13. Filtering Practice (Version 1.8, March 1, 2011);

797 14. Constructed Wetland (Version 1.9, March 1, 2011); and

798 15. Wet Pond (Version 1.9, March 1, 2011).

799 C. Nonproprietary BMPs differing from those listed in subsection B of this section shall be
800 reviewed and approved by the director in accordance with procedures established by the
801 department.

802 D. Proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse Website are
803 approved for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP
804 approved for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the
805 Code of Virginia.

806 ~~1. Any proprietary BMP listed on the Virginia Stormwater BMP Clearinghouse Website~~
807 ~~prior to July 1, 2020, shall by December 31, 2021, provide documentation to the~~
808 ~~department showing that another state, regional, or national certification program has~~
809 ~~verified and certified its nutrient or sediment removal effectiveness. Any proprietary BMP~~
810 ~~that fails to provide the department with the documentation required by December 31,~~
811 ~~2021, shall not be approved for use in any stormwater management plan submitted on or~~
812 ~~after January 1, 2022, until such proprietary BMP provides the department with such~~
813 ~~required documentation.~~

814 ~~2. Any proprietary BMP approved for use after July 1, 2020, must meet the requirements~~
815 ~~of § 62.1-44.15:28 A 9 of the Code of Virginia.~~

816 E. A VSMP authority may establish limitations on the use of specific BMPs in accordance with
817 § 62.1-44.15:33 of the Code of Virginia.

818 F. The VSMP authority shall have the discretion to allow for application of the design criteria
819 to each drainage area of the site. However, where a site drains to more than one HUC, the
820 pollutant load reduction requirements shall be applied independently within each HUC unless
821 reductions are achieved in accordance with a comprehensive watershed stormwater
822 management plan in accordance with 9VAC25-870-92.

823 G. Offsite alternatives where allowed in accordance with 9VAC25-870-69 may be utilized to
824 meet the design criteria of subsection A of 9VAC25-870-63.

825 H. Any publicly owned treatment works that is permitted under the watershed general VPDES
826 permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the
827 treatment works, wastewater collection system, or other facility used for public wastewater utility
828 operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently
829 retire a portion of its wasteload allocation to meet the design criteria of subsection A of 9VAC25-
830 870-63. Notice shall be given by such applicant to the VSMP authority and to the department.

831 **9VAC25-870-66. Water quantity.**

832 A. Channel protection and flood protection shall be addressed in accordance with the
833 minimum standards set out in this section, which are established pursuant to the requirements of
834 § 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of
835 the Code of Virginia. Nothing in this section shall prohibit a locality's VSMP authority from
836 establishing a more stringent standard in accordance with § 62.1-44.15:33 of the Code of Virginia
837 especially where more stringent requirements are necessary to address total maximum daily load
838 requirements or to protect exceptional state waters. Compliance with the minimum standards set
839 out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-840-
840 40 (Minimum standards; Virginia Erosion and Sediment Control Regulations).

841 B. Channel protection. Concentrated stormwater flow shall be released into a stormwater
842 conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where
843 applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this
844 subsection.

- 845 1. Manmade stormwater conveyance systems. When stormwater from a development is
 846 discharged to a manmade stormwater conveyance system, following the land-disturbing
 847 activity, either:
- 848 a. The manmade stormwater conveyance system shall convey the postdevelopment
 849 peak flow rate from the two-year 24-hour storm event without causing erosion of the
 850 system. Detention of stormwater or downstream improvements may be incorporated
 851 into the approved land-disturbing activity to meet this criterion, at the discretion of the
 852 VSMP authority; or
- 853 b. The peak discharge requirements for concentrated stormwater flow to natural
 854 stormwater conveyance systems in subdivision 3 of this subsection shall be met.
- 855 2. Restored stormwater conveyance systems. When stormwater from a development is
 856 discharged to a restored stormwater conveyance system that has been restored using
 857 natural design concepts, following the land-disturbing activity, either:
- 858 a. The development shall be consistent, in combination with other stormwater runoff,
 859 with the design parameters of the restored stormwater conveyance system that is
 860 functioning in accordance with the design objectives; or
- 861 b. The peak discharge requirements for concentrated stormwater flow to natural
 862 stormwater conveyance systems in subdivision 3 of this subsection shall be met.
- 863 3. Natural stormwater conveyance systems. When stormwater from a development is
 864 discharged to a natural stormwater conveyance system, the maximum peak flow rate from
 865 the one-year 24-hour storm following the land-disturbing activity shall be calculated either:
- 866 a. In accordance with the following methodology:
- 867
$$Q_{\text{Developed}} \leq I.F. * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$$
- 868 Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be
 869 required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$;
 870 where
- 871 I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.
- 872 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.
- 873 $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.
- 874 $Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.
- 875 $RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.
- 876 Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.
- 877 RV_{Forest} = The volume of runoff from the site in a forested condition; or
- 878 b. In accordance with another methodology that is demonstrated by the VSMP
 879 authority to achieve equivalent results and is approved by the ~~board~~ department.
- 880 4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance
 881 with the channel protection criteria, stormwater conveyance systems shall be analyzed for
 882 compliance with channel protection criteria to a point where either:
- 883 a. Based on land area, the site's contributing drainage area is less than or equal to
 884 1.0% of the total watershed area; or
- 885 b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm
 886 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour
 887 storm prior to the implementation of any stormwater quantity control measures.
- 888 C. Flood protection. Concentrated stormwater flow shall be released into a stormwater
 889 conveyance system and shall meet one of the following criteria as demonstrated by use of
 890 acceptable hydrologic and hydraulic methodologies:

- 891 1. Concentrated stormwater flow to stormwater conveyance systems that currently do not
892 experience localized flooding during the 10-year 24-hour storm event: The point of
893 discharge releases stormwater into a stormwater conveyance system that, following the
894 land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-
895 hour storm event within the stormwater conveyance system. Detention of stormwater or
896 downstream improvements may be incorporated into the approved land-disturbing activity
897 to meet this criterion, at the discretion of the VSMP authority.
- 898 2. Concentrated stormwater flow to stormwater conveyance systems that currently
899 experience localized flooding during the 10-year 24-hour storm event: The point of
900 discharge either:
- 901 a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event
902 within the stormwater conveyance system to avoid the localized flooding. Detention of
903 stormwater or downstream improvements may be incorporated into the approved land-
904 disturbing activity to meet this criterion, at the discretion of the VSMP authority; or
- 905 b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event
906 that is less than the predevelopment peak flow rate from the 10-year 24-hour storm
907 event. Downstream stormwater conveyance systems do not require any additional
908 analysis to show compliance with flood protection criteria if this option is utilized.
- 909 3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with
910 the flood protection criteria, stormwater conveyance systems shall be analyzed for
911 compliance with flood protection criteria to a point where:
- 912 a. The site's contributing drainage area is less than or equal to 1.0% of the total
913 watershed area draining to a point of analysis in the downstream stormwater
914 conveyance system;
- 915 b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm
916 event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-
917 hour storm event prior to the implementation of any stormwater quantity control
918 measures; or
- 919 c. The stormwater conveyance system enters a mapped floodplain or other flood-
920 prone area, adopted by ordinance, of any locality.
- 921 D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas,
922 or from physical spreading of concentrated flow through level spreaders, must be identified and
923 evaluated for potential impacts on down-gradient properties or resources. Increased volumes of
924 sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient
925 properties or resources shall be diverted to a stormwater management facility or a stormwater
926 conveyance system that conveys the runoff without causing down-gradient erosion,
927 sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this
928 subsection are met, no further water quantity controls are required.
- 929 E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be
930 assumed to be in good hydrologic condition in accordance with the U.S. Department of
931 Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of
932 conditions existing at the time of computation. Predevelopment runoff calculations utilizing other
933 hydrologic conditions may be utilized provided that it is demonstrated to and approved by the
934 VSMP authority that actual site conditions warrant such considerations.
- 935 F. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be
936 verified by site inspections, topographic surveys, available soil mapping or studies, and
937 calculations consistent with good engineering practices. Guidance provided in the Virginia

938 Stormwater Management Handbook and on the Virginia Stormwater BMP Clearinghouse Website
939 shall be considered appropriate practices.

940 **9VAC25-870-69. Offsite compliance options.**

941 A. Offsite compliance options that a VSMP authority may allow an operator to use to meet
942 required phosphorus nutrient reductions include the following:

943 1. Offsite controls utilized in accordance with a comprehensive stormwater management
944 plan adopted pursuant to 9VAC25-870-92 for the local watershed within which a project
945 is located;

946 2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243
947 of the Code of Virginia or similar local funding mechanism;

948 3. The nonpoint nutrient offset program established pursuant to § 62.1-44.15:35 of the
949 Code of Virginia;

950 4. Any other offsite options approved by an applicable state agency or state board; and

951 5. When an operator has additional properties available within the same HUC or upstream
952 HUC that the land-disturbing activity directly discharges to or within the same watershed
953 as determined by the VSMP authority, offsite stormwater management facilities on those
954 properties may be utilized to meet the required phosphorus nutrient reductions from the
955 land-disturbing activity.

956 B. Notwithstanding subsection A of this section, and pursuant to § 62.1-44.15:35 of the Code
957 of Virginia, operators shall be allowed to utilize offsite options identified in subsection A of this
958 section under any of the following conditions:

959 1. Less than five acres of land will be disturbed;

960 2. The post-construction phosphorus control requirement is less than 10 pounds per year;
961 or

962 3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at
963 least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the
964 operator can demonstrate to the satisfaction of the VSMP authority that (i) alternative site
965 designs have been considered that may accommodate on-site best management
966 practices, (ii) on-site best management practices have been considered in alternative site
967 designs to the maximum extent practicable, (iii) appropriate on-site best management
968 practices will be implemented, and (iv) full compliance with postdevelopment nonpoint
969 nutrient runoff compliance requirements cannot practicably be met on-site, then the
970 required phosphorus nutrient reductions may be achieved, in whole or in part, through the
971 use of off-site compliance options.

972 C. Notwithstanding subsections A and B of this section, offsite options shall not be allowed:

973 1. Unless the selected offsite option achieves the necessary nutrient reductions prior to
974 the commencement of the operator's land-disturbing activity. In the case of a phased
975 project, the operator may acquire or achieve offsite nutrient reductions prior to the
976 commencement of each phase of land-disturbing activity in an amount sufficient for each
977 phase.

978 2. In contravention of local water quality-based limitations at the point of discharge that
979 are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7
980 of the Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4)
981 program plan accepted by the department, or (iii) as otherwise may be established or
982 approved by the ~~board~~ department.

983 D. In order to meet the requirements of 9VAC25-870-66, offsite options described in
984 subdivisions 1 and 2 of subsection A of this section may be utilized.

985 **9VAC25-870-100. Applicability.**

986 This part establishes the ~~board's~~ department's procedures for the authorization of a VSMP,
 987 the ~~board's~~ department's procedures for the administration of a VSMP by a locality's VSMP
 988 authority or by other VSMP authorities where the procedures may be applicable, ~~and board and~~
 989 ~~department oversight authorities for a VSMP.~~

990 **9VAC25-870-102. Authority.**

991 A. If an authorized entity pursuant to § 62.1-44.15:27 of the Code of Virginia has adopted a
 992 VSMP in accordance with the Virginia Stormwater Management Act and the board department
 993 has deemed such program adoption consistent with the Virginia Stormwater Management Act
 994 and these regulations in accordance with § 62.1-44.15:27 of the Code of Virginia, the board
 995 department may authorize the entity to administer a VSMP. Pursuant to § 62.1-44.15:28 of the
 996 Code of Virginia, the board is required to establish standards and procedures for such an
 997 authorization.

998 B. In the case of a land-disturbing activity located on property controlled by a regional
 999 industrial facility authority established pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2
 1000 of the Code of Virginia, if a participating local member of such an authority also administers a
 1001 VSMP, such locality shall be authorized to administer the VSMP on authority property, in
 1002 accordance with an agreement entered into with all relevant localities and the existing VSMP for
 1003 the property.

1004 **9VAC25-870-114. Inspections.**

1005 A. The VSMP authority shall inspect the land-disturbing activity during construction for:

- 1006 1. Compliance with the approved erosion and sediment control plan;
- 1007 2. Compliance with the approved stormwater management plan;
- 1008 3. Development, updating, and implementation of a pollution prevention plan; and
- 1009 4. Development and implementation of any additional control measures necessary to
- 1010 address a TMDL.

1011 B. The VSMP authority shall establish an inspection program that ensures that stormwater
 1012 management facilities are being adequately maintained as designed after completion of land-
 1013 disturbing activities. Inspection programs shall:

- 1014 1. Be approved by the ~~board~~ department;
- 1015 2. Ensure that each stormwater management facility is inspected by the VSMP authority,
 1016 or its designee, not to include the owner, except as provided in subsections C and D of
 1017 this section, at least once every five years; and
- 1018 3. Be documented by records.

1019 C. The VSMP authority may utilize the inspection reports of the owner of a stormwater
 1020 management facility as part of an inspection program established in subsection B of this section
 1021 if the inspection is conducted by a person who is licensed as a professional engineer, architect,
 1022 landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of
 1023 Title 54.1; a person who works under the direction and oversight of the licensed professional
 1024 engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate
 1025 certificate of competence from the ~~board~~ department.

1026 D. If a recorded instrument is not required pursuant to 9VAC25-870-112, a VSMP authority
 1027 shall develop a strategy for addressing maintenance of stormwater management facilities
 1028 designed to treat stormwater runoff primarily from an individual residential lot on which they are
 1029 located. Such a strategy may include periodic inspections, homeowner outreach and education,
 1030 or other method targeted at promoting the long-term maintenance of such facilities. Such facilities
 1031 shall not be subject to the requirement for an inspection to be conducted by the VSMP authority.

1032 **9VAC25-870-116. Enforcement.**

1033 A. A locality's VSMP authority shall incorporate components from subdivisions 1 and 2 of this
1034 subsection.

1035 1. Informal and formal administrative enforcement procedures may include:

1036 a. Verbal warnings and inspection reports;

1037 b. Notices of corrective action;

1038 c. Consent special orders and civil charges in accordance with subdivision 6 of § 62.1-
1039 44.15:25 and § 62.1-44.15:48 D 2 of the Code of Virginia;

1040 d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;

1041 e. Special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the Code of
1042 Virginia;

1043 f. Emergency special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the
1044 Code of Virginia; and

1045 g. Public notice and comment periods for proposed settlements and consent special
1046 orders pursuant to 9VAC25-870-660.

1047 2. Civil and criminal judicial enforcement procedures may include:

1048 a. Schedule of civil penalties in accordance with § 62.1-44.15:48 of the Code of
1049 Virginia;

1050 b. Criminal penalties in accordance with § 62.1-44.15:48 B and C of the Code of
1051 Virginia; and

1052 c. Injunctions in accordance with §§ 62.1-44.15:25, 62.1-44.15:42, and 62.1-44.15:48
1053 D 1 of the Code of Virginia.

1054 B. A locality's VSMP authority shall develop policies and procedures that outline the steps to
1055 be taken regarding enforcement actions under the Stormwater Management Act and attendant
1056 regulations and local ordinances.

1057 C. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, the locality's VSMP authority has
1058 the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with
1059 § 62.1-44.15:48 A of the Code of Virginia. Such penalty may reflect the degree of harm caused
1060 by the violation and take into account the economic benefit to the violator from noncompliance.
1061 Violations include, but are not limited to:

1062 1. No state permit registration;

1063 2. No SWPPP;

1064 3. Incomplete SWPPP;

1065 4. SWPPP not available for review;

1066 5. No approved erosion and sediment control plan;

1067 6. Failure to install stormwater BMPs or erosion and sediment controls;

1068 7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;

1069 8. Operational deficiencies;

1070 9. Failure to conduct required inspections;

1071 10. Incomplete, improper, or missed inspections.

1072 D. Pursuant to subdivision 2 of § 62.1-44.15:25 of the Code of Virginia, authorization to
1073 administer a VSMP program shall not remove from the ~~board~~ department the authority to enforce
1074 the provisions of the Act and attendant regulations.

1075 E. The department may terminate state permit coverage during its term and require application
 1076 for an individual state permit or deny a state permit renewal application for failure to comply with
 1077 state permit conditions or on its own initiative in accordance with the Act and this chapter.

1078 F. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, civil penalties recovered by a
 1079 locality's VSMP authority shall be paid into the treasury of the locality in which the violation
 1080 occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating
 1081 pollution of the waters of the locality and abating environmental pollution therein in such manner
 1082 as the court may, by order, direct.

1083 G. The VSMP authority may use additional guidance concerning suggested penalty amounts
 1084 provided by the department.

1085 **9VAC25-870-118. Hearings.**

1086 Any permit applicant, permittee, or person subject to state permit requirements under the
 1087 Stormwater Management Act aggrieved by any action of the department ~~or board~~ taken without
 1088 a formal hearing may demand in writing a formal hearing pursuant to § 62.1-44.15:44 of the Code
 1089 of Virginia and shall ensure that all hearings held under this chapter shall be conducted in a
 1090 manner consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provided by law. A
 1091 locality holding hearings under this chapter shall do so in a manner consistent with local hearing
 1092 procedures. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of
 1093 Virginia) shall not apply to decisions rendered by localities. Appeals of decisions rendered by
 1094 localities shall be conducted in accordance with local appeal procedures and shall include an
 1095 opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs
 1096 or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such
 1097 review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and
 1098 the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other
 1099 cases under this chapter.

1100 **9VAC25-870-142. Authority and applicability.**

1101 This part specifies the criteria that the department will utilize in reviewing a VSMP authority's
 1102 administration of a VSMP pursuant to § 62.1-44.15:38 of the Code of Virginia following the ~~board's~~
 1103 department's approval of such program in accordance with the Act and this chapter.

1104 **9VAC25-870-144. Virginia stormwater management program review.**

1105 A. The department shall review each ~~board~~department-approved VSMP at least once every
 1106 five years on a review schedule approved by the ~~board~~ department. The department may review
 1107 a VSMP on a more frequent basis if deemed necessary by the ~~board~~ department and shall notify
 1108 the VSMP authority if such review is scheduled.

1109 B. The review of a ~~board~~department-approved VSMP shall consist of the following:

- 1110 1. Consultation with the VSMP administrator or designee;
- 1111 2. A review of the local ordinance(s) and other applicable documents;
- 1112 3. A review of a subset of the plans approved by the VSMP authority for consistency of
 1113 application including exceptions granted and calculations or other documentation that
 1114 demonstrates that required nutrient reductions are achieved using appropriate on-site and
 1115 off-site compliance options;
- 1116 4. A review of the funding and staffing plan developed in accordance with 9VAC25-870-
 1117 148;
- 1118 5. An inspection of regulated activities; and
- 1119 6. A review of enforcement actions and an accounting of amounts recovered through
 1120 enforcement actions where applicable.

1121 C. The department shall coordinate the once per five year review with its other program
1122 reviews for the same entity to avoid redundancy.

1123 ~~D. The department shall provide results and compliance recommendations to the board in the~~
1124 ~~form of a corrective action plan and schedule if deficiencies are found within 120 days of the~~
1125 ~~completion of a review otherwise the board may find the program compliant.~~

1126 ED. The ~~board~~ department shall determine if the VSMP and ordinances where applicable are
1127 consistent with the Act and state stormwater management regulations and notify the VSMP
1128 authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)
1129 shall govern the review activities and proceedings of the ~~board~~ department and the judicial review
1130 thereof.

1131 FE. If the ~~board~~ department determines that the deficiencies noted in the review will cause
1132 the VSMP to be out of compliance with the Act and attendant regulations, the ~~board~~ department
1133 shall notify the VSMP authority concerning the deficiencies and provide a reasonable period of
1134 time in accordance with § 62.1-44.15:38 of the Code of Virginia for corrective action to be taken.
1135 If the VSMP authority agrees to the corrective action approved by the ~~board~~ department, the
1136 VSMP will be considered to be conditionally compliant with the Act and attendant regulations until
1137 a subsequent finding of compliance is issued by the ~~board~~ department. If the VSMP authority fails
1138 to implement the necessary compliance actions identified by the ~~board~~ department within the
1139 specified time, the ~~board~~ department may take action pursuant to § 62.1-44.15:38 of the Code of
1140 Virginia.

1141 Part III C

1142 ~~State Water Control Board~~ Authorization Procedures for Virginia Stormwater Management 1143 Programs

1144 **9VAC25-870-146. Authority and applicability.**

1145 Subdivision A 1 of § 62.1-44.15:28 of the Code of Virginia requires that the board establish
1146 standards and procedures for administering a VSMP. In accordance with that requirement, and
1147 with the further authority conferred upon the ~~board~~ department by the Virginia Stormwater
1148 Management Act, this part specifies the procedures the ~~board~~ department will utilize in authorizing
1149 a VSMP authority to administer a VSMP.

1150 **9VAC25-870-150. Authorization procedures for Virginia stormwater management** 1151 **programs.**

1152 A. A locality adopting a VSMP in accordance with § 62.1-44.15:27 of the Code of Virginia must
1153 submit to the ~~board~~ department an application package that, at a minimum, contains the following:

- 1154 1. The draft VSMP ordinance(s) as required in 9VAC25-870-148;
- 1155 2. A funding and staffing plan;
- 1156 3. The policies and procedures including, but not limited to:

1157 a. Agreements with soil and water conservation districts, adjacent localities, or other
1158 public or private entities for the administration, plan review, inspection, and
1159 enforcement components of the program; and

1160 b. Contracts with third-party professionals who hold certificates of competence in the
1161 appropriate subject areas, as provided in subsection A of § 62.1-44.15:30 of the Code
1162 of Virginia, to carry out any or all of the responsibilities that Article 2.3 (§ 62.1-44.15:24
1163 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia requires of a VSMP
1164 authority, including plan review and inspection but not including enforcement; and

1165 4. Such ordinances, plans, policies, and procedures must account for any town lying within
 1166 the county as part of the locality's VSMP program unless such towns choose to adopt their
 1167 own program.

1168 B. Upon receipt of an application package, the board department or its designee shall have
 1169 30 calendar days to determine the completeness of the application package. If an application
 1170 package is deemed to be incomplete based on the criteria set out in subsection A of this section,
 1171 the board department or its designee must identify to the VSMP authority applicant in writing the
 1172 reasons the application package is deemed deficient.

1173 C. Upon receipt of a complete application package, the board department or its designee shall
 1174 have 120 calendar days for the review of the application package, unless an extension of time,
 1175 not to exceed 12 months unless otherwise specified by the board department in accordance with
 1176 § 62.1-44.15:27 of the Code of Virginia, is requested by the department, provided the VSMP
 1177 authority applicant has made substantive progress. During the 120-day review period, the board
 1178 department or its designee shall either approve or disapprove the application, or notify the locality
 1179 of a time extension for the review, and communicate its decision to the VSMP authority applicant
 1180 in writing. If the application is not approved, the reasons for not approving the application shall be
 1181 provided to the VSMP authority applicant in writing. Approval or denial shall be based on the
 1182 application's compliance with the Virginia Stormwater Management Act and this chapter.

1183 D. A VSMP authority applicant in accordance with § 62.1-44.15:27 of the Code of Virginia
 1184 shall submit a complete application package for the board's department's review pursuant to a
 1185 schedule set by the board department in accordance with § 62.1-44.15:27 and shall adopt a
 1186 VSMP consistent with the Act and this chapter within the timeframe established pursuant to §
 1187 62.1-44.15:27 or otherwise established by the board department.

1188 E. A locality or other authorized entity not required to adopt a VSMP in accordance with §
 1189 62.1-44.15:27 of the Code of Virginia but electing to adopt a VSMP shall notify the department.
 1190 Such notification shall include a proposed adoption date for a local stormwater management
 1191 program on or after July 1, 2014, in accordance with a schedule developed by the department.

1192 **9VAC25-870-300. Exclusions.**

1193 The following discharges do not require state permits:

1194 1. Any discharge of sewage from vessels, effluent from properly functioning marine
 1195 engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the
 1196 normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or
 1197 other such materials discharged overboard; nor to other discharges when the vessel is
 1198 operating in a capacity other than as a means of transportation such as when used as an
 1199 energy or mining facility, a storage facility or a seafood processing facility, or when secured
 1200 to a storage facility or a seafood processing facility, or when secured to the bed of the
 1201 ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or
 1202 development.

1203 2. Discharges of dredged or fill material into surface waters that are regulated under § 404
 1204 of the CWA.

1205 3. The introduction of sewage, industrial wastes or other pollutants into publicly owned
 1206 treatment works by indirect dischargers. Plans or agreements to switch to this method of
 1207 disposal in the future do not relieve dischargers of the obligation to have and comply with
 1208 state permits until all discharges of pollutants to surface waters are eliminated. This
 1209 exclusion does not apply to the introduction of pollutants to privately owned treatment
 1210 works or to other discharges through pipes, sewers, or other conveyances owned by a
 1211 state, municipality, or other party not leading to treatment works.

- 1212 4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant
 1213 to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency
 1214 Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).
 1215 5. Any introduction of pollutants from nonpoint source agricultural and silvicultural
 1216 activities, including stormwater runoff from orchards, cultivated crops, pastures, range
 1217 lands, and forest lands, but not discharges from concentrated animal feeding operations,
 1218 discharges from concentrated aquatic animal production facilities, discharges to
 1219 aquaculture projects, and discharges from silvicultural point sources.
 1220 6. Return flows from irrigated agriculture.
 1221 7. Discharges into a privately owned treatment works, except as the ~~State Water Control~~
 1222 ~~Board~~ department may otherwise require.

1223 **9VAC25-870-310. Prohibitions.**

1224 A. Except in compliance with a state permit issued by the ~~board~~ department pursuant to the
 1225 Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater
 1226 into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

1227 B. Any person in violation of subsection A of this section, who discharges or causes or allows
 1228 a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer
 1229 Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may
 1230 reasonably be expected to enter state waters in violation of subsection A of this section, shall
 1231 notify the department of the discharge immediately upon discovery of the discharge but in no case
 1232 later than 24 hours after said discovery. A written report of the unauthorized discharge shall be
 1233 submitted by the owner, to the department, within five days of discovery of the discharge. The
 1234 written report shall contain:

- 1235 1. A description of the nature and location of the discharge;
- 1236 2. The cause of the discharge;
- 1237 3. The date on which the discharge occurred;
- 1238 4. The length of time that the discharge continued;
- 1239 5. The volume of the discharge;
- 1240 6. If the discharge is continuing, how long it is expected to continue;
- 1241 7. If the discharge is continuing, what the expected total volume of the discharge will be;
- 1242 and
- 1243 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present
- 1244 discharge or any future discharges not authorized by the state permit.

1245 C. No state permit may be issued:

- 1246 1. When the conditions of the state permit do not provide for compliance with the
- 1247 applicable requirements of the CWA or the Act, or regulations promulgated under the CWA
- 1248 or the Act;
- 1249 2. When the state permit applicant is required to obtain a state or other appropriate
- 1250 certification under § 401 of the CWA and that certification has not been obtained or waived;
- 1251 3. When the regional administrator has objected to issuance of the state permit;
- 1252 4. When the imposition of conditions cannot ensure compliance with the applicable water
- 1253 quality requirements of all affected states;
- 1254 5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on
- 1255 any of the waters of the United States would be substantially impaired by the discharge;
- 1256 6. For the discharge of any radiological, chemical, or biological warfare agent or high-level
- 1257 radioactive waste;

- 1258 7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b)
1259 of the CWA;
- 1260 8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans
1261 in the following circumstances:
- 1262 a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining
1263 degradation of the waters of the territorial seas, the contiguous zone, and the oceans)
1264 unless the ~~board~~ department determines state permit issuance to be in the public
1265 interest; or
- 1266 b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient
1267 information exists to make a reasonable judgment whether the discharge complies
1268 with them.
- 1269 9. To a new source or a new discharger, if the discharge from its construction or operation
1270 will cause or contribute to the violation of water quality standards. The owner or operator
1271 of a new source or new discharger proposing to discharge into a water segment which
1272 does not meet applicable water quality standards or is not expected to meet those
1273 standards even after the application of the effluent limitations required by the Act and §§
1274 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed
1275 a pollutants load allocation for the pollutant to be discharged, must demonstrate, before
1276 the close of the public comment period, that:
- 1277 a. There are sufficient remaining pollutant load allocations to allow for the discharge;
1278 and
- 1279 b. The existing dischargers into that segment are subject to compliance schedules
1280 designed to bring the segment into compliance with applicable water quality standards.
1281 The ~~board~~ department may waive the submission of information by the new source or
1282 new discharger required by this subdivision if the ~~board~~ department determines that it
1283 already has adequate information to evaluate the request. An explanation of the
1284 development of limitations to meet the criteria of this paragraph is to be included in the
1285 fact sheet to the state permit under 9VAC25-870-520.
- 1286 **9VAC25-870-330. Continuation of expiring state permits.**
- 1287 A. The state permit shall expire at the end of its term, except that the conditions of an expired
1288 state permit continue in force until the effective date of a new state permit if:
- 1289 1. The permittee has submitted a timely application as required by this chapter, which is
1290 a complete application for a new state permit; and
- 1291 2. The ~~board~~ department, through no fault of the permittee, does not issue a new state
1292 permit with an effective date on or before the expiration date of the previous state permit.
- 1293 B. State permits continued under this section remain fully effective and enforceable.
- 1294 C. When the permittee is not in compliance with the conditions of the expiring or expired state
1295 permit the ~~board~~ department may choose to do any or all of the following:
- 1296 1. Initiate enforcement action based upon the state permit which has been continued;
- 1297 2. Issue a notice of intent to deny the new state permit. If the state permit is denied, the
1298 owner or operator would then be required to cease the activities authorized by the
1299 continued state permit or be subject to enforcement action for operating without a state
1300 permit;
- 1301 3. Issue a new state permit with appropriate conditions; or
- 1302 4. Take other actions authorized by this chapter.

1303 **9VAC25-870-340. Confidentiality of information.**

1304 A. The ~~board~~, the department, or the VSMP authority may require every state permit applicant
 1305 or state permittee to furnish when requested such application materials, plans, specifications, and
 1306 other pertinent information as may be necessary to determine the effect of his discharge on the
 1307 quality of state waters, or such other information as may be necessary to accomplish the purposes
 1308 of the Act and this chapter. Any personal information shall not be disclosed except to an
 1309 appropriate official of the ~~board~~, department, or VSMP authority or as may be authorized pursuant
 1310 to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

1311 1. Disclosure of records of the department, ~~the board~~, or the VSMP authority relating to (i)
 1312 active federal environmental enforcement actions that are considered confidential under
 1313 federal law and (ii) enforcement strategies, including proposed sanctions for enforcement
 1314 actions is prohibited. Upon request, such records shall be disclosed after a proposed
 1315 sanction resulting from the investigation has been determined by the department, ~~the~~
 1316 ~~board~~, or the VSMP authority.

1317 2. Any secret formula, secret processes, or secret methods other than effluent data
 1318 submitted to the department pursuant to this chapter may be claimed as confidential by
 1319 the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the
 1320 time of submission in the manner prescribed on the application form or instructions or, in
 1321 the case of other submissions, by stamping the words "secret formulae," "secret
 1322 processes" "secret methods" on each page containing such information. If no claim is
 1323 made at the time of submission, the department may make the information available to
 1324 the public without further notice. If a claim is asserted, the information will be treated in
 1325 accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et
 1326 seq. of the Code of Virginia).

1327 3. This section shall not be construed to prohibit the disclosure of records related to
 1328 inspection reports, notices of violation, and documents detailing the nature of any land-
 1329 disturbing activity that may have occurred, or similar documents.

1330 B. Claims of confidentiality for the following information will be denied:

- 1331 1. The name and address of any state permit applicant or state permittee;
- 1332 2. State permit applications, state permits, and effluent data.

1333 C. Information required by state permit application forms provided by the department may not
 1334 be claimed confidential. This includes information submitted on the forms themselves and any
 1335 attachments used to supply information required by the forms.

1336 **9VAC25-870-350. Guidance documents.**

1337 The ~~board~~ department may develop and use guidance, as appropriate, to implement technical
 1338 and regulatory details of the state permit program. Such guidance is distinguished from regulation
 1339 by the fact that it is not binding on either the ~~board~~ department or permittees. If a more appropriate
 1340 methodology than that called for in guidance is available in a given situation, the more appropriate
 1341 methodology shall be used to the extent it is consistent with applicable regulations and the
 1342 Stormwater Management Act.

1343 **9VAC25-870-360. Application for a state permit.**

1344 A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or
 1345 upon state waters from municipal separate storm sewer systems or land-disturbing activities and
 1346 who does not have an effective state permit, except persons covered by general permits,
 1347 excluded from the requirement for a state permit by this chapter, shall submit a complete
 1348 application in accordance with this section.

1349 B. Who applies. When a facility or activity is owned by one person but is operated by another
 1350 person, it is the operator's duty to obtain a state permit.

1351 C. Time to apply. Any person proposing a new discharge shall submit an application at least
 1352 180 days before the date on which the discharge is to commence, unless permission for a later
 1353 date has been granted by the ~~board~~ department. Stormwater discharges from large construction
 1354 activities and stormwater discharges associated with small construction activities shall submit
 1355 applications at least 90 days before the date on which construction is to commence. Different
 1356 submittal dates may be required under the terms of applicable general permits. Persons
 1357 proposing a new discharge are encouraged to submit their applications well in advance of the 90-
 1358 day or 180-day requirements to avoid delay.

1359 D. Duty to reapply. All state permittees with a currently effective state permit shall submit a
 1360 new application at least 180 days before the expiration date of the existing state permit unless
 1361 permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department
 1362 shall not grant permission for applications to be submitted later than the expiration date of the
 1363 existing state permit.

1364 E. Completeness. The ~~board~~ department shall not issue a state permit before receiving a
 1365 complete application for a state permit except for general permits. An application for a state permit
 1366 is complete when the ~~board~~ department receives an application form and any supplemental
 1367 information which are completed to its satisfaction. The completeness of any application for a
 1368 state permit shall be judged independently of the status of any other state permit application or
 1369 state permit for the same facility or activity.

1370 F. Information requirements. All applicants for state permits shall provide the following
 1371 information using the application form provided by the department:

- 1372 1. The activities conducted by the state permit applicant which require it to obtain a state
 1373 permit;
- 1374 2. Name, mailing address, and location of the facility for which the application is submitted;
- 1375 3. Up to four SIC codes which best reflect the principal products or services provided by
 1376 the facility;
- 1377 4. The operator's name, address, telephone number, email address, ownership status,
 1378 and status as federal, state, private, public, or other entity;
- 1379 5. Whether the facility is located on Indian lands;
- 1380 6. A listing of all permits or construction approvals received, applied for, or to be applied
 1381 for under any of the following programs:
 - 1382 a. Hazardous Waste Management program under the Resource Conservation and
 1383 Recovery Act (RCRA) (42 USC § 6921);
 - 1384 b. UIC program under the Safe Drinking Water Act (SDWA) (42 USC § 300h);
 - 1385 c. VPDES program under the CWA and the State Water Control Law;
 - 1386 d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42
 1387 USC § 4701 et seq.);
 - 1388 e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
 - 1389 f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction
 1390 approval under the Clean Air Act (42 USC § 4701 et seq.);
 - 1391 g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act
 1392 (33 USC § 14 et seq.);
 - 1393 h. Dredge or fill permits under § 404 of the CWA;
 - 1394 i. A state permit under the CWA and the Virginia Stormwater Management Act; and
 - 1395 j. Other relevant environmental permits, including state permits;

1396 7. A topographic map (or other map if a topographic map is unavailable) extending one
 1397 mile beyond the property boundaries of the source, which depicts: the facility and (i) each
 1398 of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage,
 1399 or disposal facilities; (iii) each well where fluids from the facility are injected underground;
 1400 and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in
 1401 public records or otherwise known to the state permit applicant in the map area; and
 1402 8. A brief description of the nature of the business.

1403 G. Variance requests. A discharger which is not a publicly owned treatment works (POTW)
 1404 may request a variance from otherwise applicable effluent limitations under any of the following
 1405 statutory or regulatory provisions within the times specified in this subsection:

1406 1. Fundamentally different factors.

1407 a. A request for a variance based on the presence of fundamentally different factors
 1408 from those on which the effluent limitations guideline was based shall be filed as
 1409 follows:

1410 (1) For a request from best practicable control technology currently available (BPT),
 1411 by the close of the public comment period for the draft state permit; or

1412 (2) For a request from best available technology economically achievable (BAT) and/or
 1413 best conventional pollutant control technology (BCT), by no later than 180 days after
 1414 the date on which an effluent limitation guideline is published in the Federal Register
 1415 for a request based on an effluent limitation guideline promulgated on or after February
 1416 4, 1987.

1417 b. The request shall explain how the requirements of the applicable regulatory or
 1418 statutory criteria have been met.

1419 2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants
 1420 (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because
 1421 of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA
 1422 (provided, however, that a § 301(g) variance may only be requested for ammonia,
 1423 chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant
 1424 covered by § 301(b)(2)(F) of the CWA) and any other pollutant that the administrator lists
 1425 under § 301(g)(4) of the CWA) must be made as follows:

1426 a. For those requests for a variance from an effluent limitation based upon an effluent
 1427 limitation guideline by:

1428 (1) Submitting an initial request to the regional administrator, as well as to the
 1429 department, stating the name of the discharger, the state permit number, the outfall
 1430 number(s), the applicable effluent guideline, and whether the discharger is requesting
 1431 a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been
 1432 filed not later than 270 days after promulgation of an applicable effluent limitation
 1433 guideline; and

1434 (2) Submitting a completed request no later than the close of the public comment
 1435 period for the draft state permit demonstrating that: (i) all reasonable ascertainable
 1436 issues have been raised and all reasonably available arguments and materials
 1437 supporting their position have been submitted; and (ii) that the applicable requirements
 1438 of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete
 1439 application for a request under § 301(g) of the CWA shall be filed 180 days before
 1440 EPA must make a decision (unless the Regional Administrator establishes a shorter
 1441 or longer period); or

1442 b. For those requests for a variance from effluent limitations not based on effluent
 1443 limitation guidelines, the request need only comply with subdivision 2 a (2) of this

1444 subsection and need not be preceded by an initial request under subdivision 2 a (1) of
1445 this subsection.

1446 3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the
1447 CWA for achieving water quality related effluent limitations may be requested no later than
1448 the close of the public comment period for the draft state permit on the state permit from
1449 which the modification is sought.

1450 4. A variance for alternate effluent limitations for the thermal component of any discharge
1451 must be filed with a timely application for a state permit under this section, except that if
1452 thermal effluent limitations are established on a case-by-case basis or are based on water
1453 quality standards the request for a variance may be filed by the close of the public
1454 comment period for the draft state permit. A copy of the request shall be sent
1455 simultaneously to the department.

1456 H. Expedited variance procedures and time extensions.

1457 1. Notwithstanding the time requirements in subsection G of this section, the board
1458 department may notify a state permit applicant before a draft state permit is issued that
1459 the draft state permit will likely contain limitations which are eligible for variances. In the
1460 notice the board department may require the state permit applicant as a condition of
1461 consideration of any potential variance request to submit a request explaining how the
1462 requirements of 40 CFR Part 125 applicable to the variance have been met and may
1463 require its submission within a specified reasonable time after receipt of the notice. The
1464 notice may be sent before the state permit application has been submitted. The draft or
1465 final state permit may contain the alternative limitations which may become effective upon
1466 final grant of the variance.

1467 2. A discharger who cannot file a timely complete request required under subdivisions G
1468 2 a (2) or G 2 b of this section may request an extension. The extension may be granted
1469 or denied at the discretion of the board department. Extensions shall be no more than six
1470 months in duration.

1471 I. Recordkeeping. State permit applicants shall keep records of all data used to complete state
1472 permit applications and any supplemental information submitted under this section for a period of
1473 at least three years from the date the application is signed.

1474 **9VAC25-870-365. Permit Rationale.**

1475 In granting a permit pursuant to this chapter, the department shall provide, in writing, a clear
1476 and concise statement of the legal basis, scientific rationale, and justification for the decision
1477 reached. When the decision of the department is to deny a permit the department shall, in
1478 consultation with legal counsel, provide a clear and concise statement explaining the reason for
1479 the denial, the scientific justification for the same, and how the department's decision is in
1480 compliance with applicable laws and regulations. Copies of the decision, certified by the director,
1481 shall be mailed by certified mail to the permittee or applicant.

1482 **9VAC25-870-370. Signatories to state permit applications and reports.**

1483 A. All state permit applications shall be signed as follows:

1484 1. For a corporation: by a responsible corporate officer. For the purpose of this section, a
1485 responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president
1486 of the corporation in charge of a principal business function, or any other person who
1487 performs similar policy-making or decision-making functions for the corporation, or (ii) the
1488 manager of one or more manufacturing, production, or operating facilities, provided the
1489 manager is authorized to make management decisions that govern the operation of the
1490 regulated facility, including having the explicit or implicit duty of making major capital
1491 investment recommendations, and initiating and directing other comprehensive measures

1492 to assure long-term environmental compliance with environmental laws and regulations;
 1493 the manager can ensure that the necessary systems are established or actions taken to
 1494 gather complete and accurate information for state permit application requirements; and
 1495 where authority to sign documents has been assigned or delegated to the manager in
 1496 accordance with corporate procedures;

1497 2. For a partnership or sole proprietorship: by a general partner or the proprietor,
 1498 respectively; or

1499 3. For a municipality, state, federal, or other public agency: by either a principal executive
 1500 officer or ranking elected official. For purposes of this section, a principal executive officer
 1501 of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior
 1502 executive officer having responsibility for the overall operations of a principal geographic
 1503 unit of the agency.

1504 B. All reports required by state permits, and other information requested by the ~~board~~
 1505 department shall be signed by a person described in subsection A of this section, or by a duly
 1506 authorized representative of that person. A person is a duly authorized representative only if:

1507 1. The authorization is made in writing by a person described in subsection A of this
 1508 section;

1509 2. The authorization specifies either an individual or a position having responsibility for the
 1510 overall operation of the regulated facility or activity such as the position of plant manager,
 1511 operator of a well or a well field, superintendent, position of equivalent responsibility, or
 1512 an individual or position having overall responsibility for environmental matters for the
 1513 company. A duly authorized representative may thus be either a named individual or any
 1514 individual occupying a named position; and

1515 3. The written authorization is submitted to the department.

1516 C. If an authorization under subsection B of this section is no longer accurate because a
 1517 different individual or position has responsibility for the overall operation of the facility, a new
 1518 authorization satisfying the requirements of subsection B of this section must be submitted to the
 1519 department prior to or together with any reports, or information to be signed by an authorized
 1520 representative.

1521 D. Any person signing a document under subsection A or B of this section shall make the
 1522 following certification:

1523 "I certify under penalty of law that this document and all attachments were prepared under
 1524 my direction or supervision in accordance with a system designed to assure that qualified
 1525 personnel properly gather and evaluate the information submitted. Based on my inquiry of
 1526 the person or persons who manage the system, or those persons directly responsible for
 1527 gathering the information, the information submitted is, to the best of my knowledge and
 1528 belief, true, accurate, and complete. I am aware that there are significant penalties for
 1529 submitting false information, including the possibility of fine and imprisonment for knowing
 1530 violations."

1531 E. Electronic reporting. If documents described in subsection A or B of this section are
 1532 submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the
 1533 electronic signature for such documents shall meet all relevant requirements of this section and
 1534 shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia
 1535 Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3
 1536 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

1537 **9VAC25-870-380. Stormwater discharges.**

1538 A. State permit requirements.

- 1539 1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be
 1540 required to obtain a state permit except:
- 1541 a. A discharge with respect to which a state permit has been issued prior to February
 1542 4, 1987;
 - 1543 b. A stormwater discharge associated with large construction activity;
 - 1544 c. A discharge from a large municipal separate storm sewer system;
 - 1545 d. A discharge from a medium municipal separate storm sewer system; or
 - 1546 e. A discharge that either the ~~board~~ department or the regional administrator
 1547 determines to contribute to a violation of a water quality standard or is a significant
 1548 contributor of pollutants to surface waters. This designation may include a discharge
 1549 from any conveyance or system of conveyances used for collecting and conveying
 1550 stormwater runoff or a system of discharges from municipal separate storm sewers,
 1551 except for those discharges from conveyances that do not require a state permit under
 1552 subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from
 1553 the definition of point source.
- 1554 The ~~board~~ department may designate discharges from municipal separate storm
 1555 sewers on a system-wide or jurisdiction-wide basis. In making this determination the
 1556 ~~board~~ department may consider the following factors:
- 1557 (1) The location of the discharge with respect to surface waters;
 - 1558 (2) The size of the discharge;
 - 1559 (3) The quantity and nature of the pollutants discharged to surface waters; and
 - 1560 (4) Other relevant factors.
- 1561 2. The ~~board~~ department may not require a state permit for discharges of stormwater
 1562 runoff from mining operations or oil and gas exploration, production, processing or
 1563 treatment operations, or transmission facilities, composed entirely of flows that are from
 1564 conveyances or systems of conveyances (including but not limited to pipes, conduits,
 1565 ditches, and channels) used for collecting and conveying precipitation runoff and that are
 1566 not contaminated by contact with or that has not come into contact with, any overburden,
 1567 raw material, intermediate products, finished product, by-product or waste products
 1568 located on the site of such operations.
- 1569 3. a. State permits must be obtained for all discharges from large and medium municipal
 1570 separate storm sewer systems.
- 1571 b. The ~~board~~ department may either issue one system-wide state permit covering all
 1572 discharges from municipal separate storm sewers within a large or medium municipal
 1573 storm sewer system or issue distinct state permits for appropriate categories of
 1574 discharges within a large or medium municipal separate storm sewer system including,
 1575 but not limited to: all discharges owned or operated by the same municipality; located
 1576 within the same jurisdiction; all discharges within a system that discharge to the same
 1577 watershed; discharges within a system that are similar in nature; or for individual
 1578 discharges from municipal separate storm sewers within the system.
 - 1579 c. The operator of a discharge from a municipal separate storm sewer that is part of a
 1580 large or medium municipal separate storm sewer system must either:
- 1581 (1) Participate in a state permit application (to be a state permittee or a state co-
 1582 permittee) with one or more other operators of discharges from the large or medium
 1583 municipal storm sewer system that covers all, or a portion of all, discharges from the
 1584 municipal separate storm sewer system;

- 1585 (2) Submit a distinct state permit application that only covers discharges from the
 1586 municipal separate storm sewers for which the operator is responsible; or
- 1587 (3) A regional authority may be responsible for submitting a state permit application
 1588 under the following guidelines:
- 1589 (a) The regional authority together with state permit co-applicants shall have authority
 1590 over a stormwater management program that is in existence, or shall be in existence
 1591 at the time Part 1 of the application is due;
- 1592 (b) The state permit applicant or co-applicants shall establish their ability to make a
 1593 timely submission of Part 1 and Part 2 of the municipal application;
- 1594 (c) Each of the operators of municipal separate storm sewers within large or medium
 1595 municipal separate storm sewer systems, that are under the purview of the designated
 1596 regional authority, shall comply with the application requirements of subsection C of
 1597 this section.
- 1598 d. One state permit application may be submitted for all or a portion of all municipal
 1599 separate storm sewers within adjacent or interconnected large or medium municipal
 1600 separate storm sewer systems. The board department may issue one system-wide
 1601 state permit covering all, or a portion of all municipal separate storm sewers in adjacent
 1602 or interconnected large or medium municipal separate storm sewer systems.
- 1603 e. State permits for all or a portion of all discharges from large or medium municipal
 1604 separate storm sewer systems that are issued on a system-wide, jurisdiction-wide,
 1605 watershed or other basis may specify different conditions relating to different
 1606 discharges covered by the state permit, including different management programs for
 1607 different drainage areas that contribute stormwater to the system.
- 1608 f. State co-permittees need only comply with state permit conditions relating to
 1609 discharges from the municipal separate storm sewers for which they are operators.
- 1610 4. In addition to meeting the requirements of subsection B of this section, an operator of
 1611 a stormwater discharge associated with a large construction activity that discharges
 1612 through a large or medium municipal separate storm sewer system shall submit to the
 1613 operator of the municipal separate storm sewer system receiving the discharge no later
 1614 than May 15, 1991, or 180 days prior to commencing such discharge: the name of the
 1615 facility; a contact person and phone number; the location of the discharge; a description,
 1616 including Standard Industrial Classification, that best reflects the principal products or
 1617 services provided by each facility; and any existing state permit number.
- 1618 5. The board department may issue state permits for municipal separate storm sewers
 1619 that are designated under subdivision A 1 e of this section on a system-wide basis,
 1620 jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue state
 1621 permits for individual discharges.
- 1622 6. Conveyances that discharge stormwater runoff combined with municipal sewage are
 1623 point sources that must obtain separate VPDES permits in accordance with the
 1624 procedures of 9VAC25-31 and are not subject to the provisions of this section.
- 1625 7. Whether a discharge from a municipal separate storm sewer is or is not subject to
 1626 regulation under this subsection shall have no bearing on whether the owner or operator
 1627 of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.
- 1628 8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that
 1629 are not required by subdivision 1 of this subsection to obtain a state permit, operators shall
 1630 be required to obtain a state permit only if:
- 1631 (1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-
 1632 870-400 B;

- 1633 (2) The discharge is a stormwater discharge associated with small construction activity
 1634 as defined in 9VAC25-870-10;
- 1635 (3) The ~~board~~ department or the EPA regional administrator determines that
 1636 stormwater controls are needed for the discharge based on wasteload allocations that
 1637 are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of
 1638 concern; or
- 1639 (4) The ~~board~~ department or the EPA regional administrator determines that the
 1640 discharge, or category of discharges within a geographic area, contributes to a
 1641 violation of a water quality standard or is a significant contributor of pollutants to
 1642 surface waters.
- 1643 b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4)
 1644 of this subsection shall seek coverage under a state permit in accordance with
 1645 9VAC25-870-400 C through E. Operators of nonmunicipal sources designated
 1646 pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage
 1647 under a state permit in accordance with subdivision B 1 of this section.
- 1648 c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and
 1649 (4) of this subsection shall apply to the ~~board~~ department for a state permit within 180
 1650 days of receipt of notice, unless permission for a later date is granted by the ~~board~~
 1651 department.
- 1652 B. Application requirements for stormwater discharges associated with large and small
 1653 construction activity.
- 1654 1. Dischargers of stormwater associated with large and small construction activity are
 1655 required to apply for an individual state permit or seek coverage under a promulgated
 1656 stormwater general permit. Facilities that are required to obtain an individual state permit,
 1657 or any discharge of stormwater that the ~~board~~ department is evaluating for designation
 1658 under subdivision A 1 e of this section and is not a municipal separate storm sewer, shall
 1659 submit a state application in accordance with the requirements of 9VAC25-870-360 as
 1660 modified and supplemented by the provisions of this subsection.
- 1661 a. The operator of an existing or new stormwater discharge that is associated with a
 1662 large or small construction activity shall provide a narrative description of:
- 1663 (1) The location (including a map) and the nature of the construction activity;
- 1664 (2) The total area of the site and the area of the site that is expected to undergo
 1665 excavation during the life of the state permit;
- 1666 (3) Proposed measures, including best management practices, to control pollutants in
 1667 stormwater discharges during construction, including a brief description of applicable
 1668 state and VESCP requirements;
- 1669 (4) Proposed measures to control pollutants in stormwater discharges that will occur
 1670 after construction operations have been completed, including a brief description of
 1671 applicable state or local VESCP requirements;
- 1672 (5) An estimate of the runoff coefficient of the site and the increase in impervious area
 1673 after the construction addressed in the state permit application is completed, the
 1674 nature of fill material and existing data describing the soil or the quality of the
 1675 discharge; and
- 1676 (6) The name of the receiving water.
- 1677 (7) Location of Chesapeake Bay Preservation Areas.
- 1678 b. State permit applicants shall provide such other information the ~~board~~ department
 1679 may reasonably require to determine whether to issue a state permit.

1680 C. Application requirements for large and medium municipal separate storm sewer
 1681 discharges. The operator of a discharge from a large or medium municipal separate storm sewer
 1682 or a municipal separate storm sewer that is designated by the ~~board~~ department under subdivision
 1683 A 1 e of this section may submit a jurisdiction-wide or system-wide state permit application. Where
 1684 more than one public entity owns or operates a municipal separate storm sewer within a
 1685 geographic area (including adjacent or interconnected municipal separate storm sewer systems),
 1686 such operators may be a state permit coapplicant to the same application. State permit
 1687 applications for discharges from large and medium municipal storm sewers or municipal storm
 1688 sewers designated under subdivision A 1 e of this section shall include;

1689 1. Part 1 of the application shall consist of:

1690 a. The state permit applicants' name, address, telephone number, and email address;
 1691 ownership status; status as a state or local government entity; and the name, address,
 1692 telephone number, and email address of a contact person;

1693 b. A description of existing legal authority to control discharges to the municipal
 1694 separate storm sewer system. When existing legal authority is not sufficient to meet
 1695 the criteria provided in subdivision 2 a of this subsection, the description shall list
 1696 additional authorities as will be necessary to meet the criteria and shall include a
 1697 schedule and commitment to seek such additional authority that will be needed to meet
 1698 the criteria;

1699 c. Source identification.

1700 (1) A description of the historic use of ordinances, guidance or other controls that
 1701 limited the discharge of nonstormwater discharges to any publicly owned treatment
 1702 works serving the same area as the municipal separate storm sewer system.

1703 (2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale
 1704 between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the
 1705 service boundaries of the municipal storm sewer system covered by the state permit
 1706 application. The following information shall be provided:

1707 (a) The location of known municipal storm sewer system outfalls discharging to surface
 1708 waters;

1709 (b) A description of the land use activities (e.g., divisions indicating undeveloped,
 1710 residential, commercial, agricultural, and industrial uses) accompanied with estimates
 1711 of population densities and projected growth for a 10-year period within the drainage
 1712 area served by the separate storm sewer. For each land use type, an estimate of an
 1713 average runoff coefficient shall be provided;

1714 (c) The location and a description of the activities of the facility of each currently
 1715 operating or closed municipal landfill or other treatment, storage or disposal facility for
 1716 municipal waste;

1717 (d) The location and the state permit number of any known discharge to the municipal
 1718 storm sewer that has been issued a state permit;

1719 (e) The location of major structural controls for stormwater discharge (retention basins,
 1720 detention basins, major infiltration devices, etc.); and

1721 (f) The identification of publicly owned parks, recreational areas, and other open lands;

1722 d. Discharge characterization.

1723 (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data)
 1724 and the monthly average number of storm events.

- 1725 (2) Existing quantitative data describing the volume and quality of discharges from the
 1726 municipal storm sewer, including a description of the outfalls sampled, sampling
 1727 procedures and analytical methods used.
- 1728 (3) A list of water bodies that receive discharges from the municipal separate storm
 1729 sewer system, including downstream segments, lakes and estuaries, where pollutants
 1730 from the system discharges may accumulate and cause water degradation and a brief
 1731 description of known water quality impacts. At a minimum, the description of impacts
 1732 shall include a description of whether the water bodies receiving such discharges have
 1733 been:
- 1734 (a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the
 1735 basis for the assessment (evaluated or monitored), a summary of designated use
 1736 support and attainment of the State Water Control Law and the CWA goals (fishable
 1737 and swimmable waters), and causes of nonsupport of designated uses;
- 1738 (b) Listed under § 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) of the CWA that is not
 1739 expected to meet water quality standards or water quality goals;
- 1740 (c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA
 1741 that, without additional action to control nonpoint sources of pollution, cannot
 1742 reasonably be expected to attain or maintain water quality standards due to storm
 1743 sewers, construction, highway maintenance and runoff from municipal landfills and
 1744 municipal sludge adding significant pollution (or contributing to a violation of water
 1745 quality standards);
- 1746 (d) Identified and classified according to eutrophic condition of publicly owned lakes
 1747 listed in state reports required under § 314(a) of the CWA (include the following: a
 1748 description of those publicly owned lakes for which uses are known to be impaired; a
 1749 description of procedures, processes and methods to control the discharge of
 1750 pollutants from municipal separate storm sewers into such lakes; and a description of
 1751 methods and procedures to restore the quality of such lakes);
- 1752 (e) Areas of concern of the Great Lakes identified by the International Joint
 1753 Commission;
- 1754 (f) Designated estuaries under the National Estuary Program under § 320 of the CWA;
- 1755 (g) Recognized by the state permit applicant as highly valued or sensitive waters;
- 1756 (h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory
 1757 as wetlands; and
- 1758 (i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.
- 1759 (4) Results of a field screening analysis for illicit connections and illegal dumping for
 1760 either selected field screening points or major outfalls covered in the state permit
 1761 application. At a minimum, a screening analysis shall include a narrative description,
 1762 for either each field screening point or major outfall, of visual observations made during
 1763 dry weather periods. If any flow is observed, two grab samples shall be collected
 1764 during a 24-hour period with a minimum period of four hours between samples. For all
 1765 such samples, a narrative description of the color, odor, turbidity, the presence of an
 1766 oil sheen or surface scum as well as any other relevant observations regarding the
 1767 potential presence of nonstormwater discharges or illegal dumping shall be provided.
 1768 In addition, a narrative description of the results of a field analysis using suitable
 1769 methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or
 1770 surfactants) shall be provided along with a description of the flow rate. Where the field
 1771 analysis does not involve analytical methods approved under 40 CFR Part 136, the
 1772 state permit applicant shall provide a description of the method used including the

1773 name of the manufacturer of the test method along with the range and accuracy of the
1774 test. Field screening points shall be either major outfalls or other outfall points (or any
1775 other point of access such as manholes) randomly located throughout the storm sewer
1776 system by placing a grid over a drainage system map and identifying those cells of the
1777 grid which contain a segment of the storm sewer system or major outfall. The field
1778 screening points shall be established using the following guidelines and criteria:

1779 (a) A grid system consisting of perpendicular north-south and east-west lines spaced
1780 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating
1781 a series of cells;

1782 (b) All cells that contain a segment of the storm sewer system shall be identified; one
1783 field screening point shall be selected in each cell; major outfalls may be used as field
1784 screening points;

1785 (c) Field screening points should be located downstream of any sources of suspected
1786 illegal or illicit activity;

1787 (d) Field screening points shall be located to the degree practicable at the farthest
1788 manhole or other accessible location downstream in the system, within each cell;
1789 however, safety of personnel and accessibility of the location should be considered in
1790 making this determination;

1791 (e) Hydrological conditions; total drainage area of the site; population density of the
1792 site; traffic density; age of the structures or buildings in the area; history of the area;
1793 and land use types;

1794 (f) For medium municipal separate storm sewer systems, no more than 250 cells need
1795 to have identified field screening points; in large municipal separate storm sewer
1796 systems, no more than 500 cells need to have identified field screening points; cells
1797 established by the grid that contain no storm sewer segments will be eliminated from
1798 consideration; if fewer than 250 cells in medium municipal sewers are created, and
1799 fewer than 500 in large systems are created by the overlay on the municipal sewer
1800 map, then all those cells which contain a segment of the sewer system shall be subject
1801 to field screening (unless access to the separate storm sewer system is impossible);
1802 and

1803 (g) Large or medium municipal separate storm sewer systems which are unable to
1804 utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this
1805 subsection, because a sufficiently detailed map of the separate storm sewer systems
1806 is unavailable, shall field screen no more than 500 or 250 major outfalls respectively
1807 (or all major outfalls in the system, if less); in such circumstances, the state permit
1808 applicant shall establish a grid system consisting of north-south and east-west lines
1809 spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer
1810 system, thereby creating a series of cells; the state permit applicant will then select
1811 major outfalls in as many cells as possible until at least 500 major outfalls (large
1812 municipalities) or 250 major outfalls (medium municipalities) are selected; a field
1813 screening analysis shall be undertaken at these major outfalls.

1814 (5) Information and a proposed program to meet the requirements of subdivision 2 c
1815 of this subsection. Such description shall include: the location of outfalls or field
1816 screening points appropriate for representative data collection under subdivision 2 c
1817 (1) of this subsection, a description of why the outfall or field screening point is
1818 representative, the seasons during which sampling is intended, and a description of
1819 the sampling equipment. The proposed location of outfalls or field screening points for
1820 such sampling should reflect water quality concerns (see subdivision 1 d (3) of this
1821 subsection) to the extent practicable;

- 1822 e. Management programs.
- 1823 (1) A description of the existing management programs to control pollutants from the
- 1824 municipal separate storm sewer system. The description shall provide information on
- 1825 existing structural and source controls, including operation and maintenance
- 1826 measures for structural controls, that are currently being implemented. Such controls
- 1827 may include, but are not limited to, procedures to control pollution resulting from
- 1828 construction activities, floodplain management controls, wetland protection measures,
- 1829 best management practices for new subdivisions; and emergency spill response
- 1830 programs. The description may address controls established under state law as well
- 1831 as local requirements.
- 1832 (2) A description of the existing program to identify illicit connections to the municipal
- 1833 storm sewer system. The description should include inspection procedures and
- 1834 methods for detecting and preventing illicit discharges, and describe areas where this
- 1835 program has been implemented; and
- 1836 f. Fiscal resources. A description of the financial resources currently available to the
- 1837 municipality to complete Part 2 of the state permit application. A description of the
- 1838 municipality's budget for existing stormwater programs, including an overview of the
- 1839 municipality's financial resources and budget, including overall indebtedness and
- 1840 assets, and sources of funds for stormwater programs.
- 1841 2. Part 2 of the application shall consist of:
- 1842 a. A demonstration that the state permit applicant can operate pursuant to legal
- 1843 authority established by statute, ordinance or series of contracts that authorizes or
- 1844 enables the state permit applicant at a minimum to:
- 1845 (1) Control through ordinance, state permit, contract, order or similar means, the
- 1846 contribution of pollutants to the municipal storm sewer by stormwater discharges
- 1847 associated with industrial activity and the quality of stormwater discharged from sites
- 1848 of industrial activity;
- 1849 (2) Prohibit through ordinance, order or similar means, illicit discharges to the
- 1850 municipal separate storm sewer;
- 1851 (3) Control through ordinance, order or similar means the discharge to a municipal
- 1852 separate storm sewer of spills, dumping or disposal of materials other than stormwater;
- 1853 (4) Control through interagency agreements among state permit coapplicants the
- 1854 contribution of pollutants from one portion of the municipal system to another portion
- 1855 of the municipal system;
- 1856 (5) Require compliance with conditions in ordinances, state permits, contracts or
- 1857 orders; and
- 1858 (6) Carry out all inspection, surveillance and monitoring procedures necessary to
- 1859 determine compliance and noncompliance with state permit conditions including the
- 1860 prohibition on illicit discharges to the municipal separate storm sewer;
- 1861 b. The location of any major outfall that discharges to surface waters that was not
- 1862 reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory,
- 1863 organized by watershed of the name and address, and a description (such as SIC
- 1864 codes) that best reflects the principal products or services provided by each facility
- 1865 that may discharge, to the municipal separate storm sewer, stormwater associated
- 1866 with industrial activity;
- 1867 c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of
- 1868 this subsection, the state permit applicant must collect a sample of effluent in
- 1869 accordance with 9VAC25-870-390 and analyze it for the pollutant in accordance with

1870 analytical methods approved under 40 CFR Part 136. When no analytical method is
 1871 approved the state permit applicant may use any suitable method but must provide a
 1872 description of the method. The state permit applicant must provide information
 1873 characterizing the quality and quantity of discharges covered in the state permit
 1874 application, including:

1875 (1) Quantitative data from representative outfalls designated by the ~~board~~ department
 1876 (based on information received in Part 1 of the application, the ~~board~~ department shall
 1877 designate between five and 10 outfalls or field screening points as representative of
 1878 the commercial, residential and industrial land use activities of the drainage area
 1879 contributing to the system or, where there are less than five outfalls) covered in the
 1880 application, the ~~board~~ department shall designate all outfalls developed as follows:

1881 (a) For each outfall or field screening point designated under this subsection, samples
 1882 shall be collected of stormwater discharges from three storm events occurring at least
 1883 one month apart in accordance with the requirements at 9VAC25-870-390 (the ~~board~~
 1884 department may allow exemptions to sampling three storm events when climatic
 1885 conditions create good cause for such exemptions);

1886 (b) A narrative description shall be provided of the date and duration of the storm event
 1887 or events sampled, rainfall estimates of the storm event which generated the sampled
 1888 discharge and the duration between the storm event sampled and the end of the
 1889 previous measurable (greater than 0.1 inch rainfall) storm event;

1890 (c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of
 1891 this subsection, quantitative data shall be provided for: the organic pollutants listed in
 1892 Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of
 1893 40 CFR Part 122 Appendix D, and for the following pollutants:

1894 Total suspended solids (TSS)

1895 Total dissolved solids (TDS)

1896 Chemical oxygen demand (COD)

1897 Biochemical oxygen demand (BOD₅)

1898 Oil and grease

1899 Fecal coliform

1900 Fecal streptococcus

1901 pH

1902 Total Kjeldahl nitrogen

1903 Nitrate plus nitrite

1904 Dissolved phosphorus

1905 Total ammonia plus organic nitrogen

1906 Total phosphorus

1907 (d) Additional limited quantitative data required by the ~~board~~ department for
 1908 determining state permit conditions (the ~~board~~ department may require that
 1909 quantitative data shall be provided for additional parameters, and may establish
 1910 sampling conditions such as the location, season of sample collection, form of
 1911 precipitation (snow melt, rainfall) and other parameters necessary to ensure
 1912 representativeness);

1913 (2) Estimates of the annual pollutant load of the cumulative discharges to surface
 1914 waters from all identified municipal outfalls and the event mean concentration of the
 1915 cumulative discharges to surface waters from all identified municipal outfalls during a

- 1916 storm event (as described under 9VAC25-870-390) for BOD₅, COD, TSS, dissolved
 1917 solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved
 1918 phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a
 1919 description of the procedures for estimating constituent loads and concentrations,
 1920 including any modeling, data analysis, and calculation methods;
- 1921 (3) A proposed schedule to provide estimates for each major outfall identified in either
 1922 subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of
 1923 the event mean concentration of a representative storm for any constituent detected
 1924 in any sample required under subdivision 2 c (1) of this subsection; and
- 1925 (4) A proposed monitoring program for representative data collection for the term of
 1926 the state permit that describes the location of outfalls or field screening points to be
 1927 sampled (or the location of instream stations), why the location is representative, the
 1928 frequency of sampling, parameters to be sampled, and a description of sampling
 1929 equipment;
- 1930 d. A proposed management program that covers the duration of the state permit. It
 1931 shall include a comprehensive planning process that involves public participation and,
 1932 where necessary, intergovernmental coordination to reduce the discharge of pollutants
 1933 to the maximum extent practicable using management practices, control techniques
 1934 and system, design and engineering methods, and such other provisions that are
 1935 appropriate. The program shall also include a description of staff and equipment
 1936 available to implement the program. Separate proposed programs may be submitted
 1937 by each state permit coapplicant. Proposed programs may impose controls on a
 1938 system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls.
 1939 Proposed programs will be considered by the ~~board~~ department when developing
 1940 state permit conditions to reduce pollutants in discharges to the maximum extent
 1941 practicable. Proposed management programs shall describe priorities for
 1942 implementing controls. Such programs shall be based on:
- 1943 (1) A description of structural and source control measures to reduce pollutants from
 1944 runoff from commercial and residential areas that are discharged from the municipal
 1945 storm sewer system that are to be implemented during the life of the state permit,
 1946 accompanied with an estimate of the expected reduction of pollutant loads and a
 1947 proposed schedule for implementing such controls. At a minimum, the description shall
 1948 include:
- 1949 (a) A description of maintenance activities and a maintenance schedule for structural
 1950 controls to reduce pollutants (including floatables) in discharges from municipal
 1951 separate storm sewers;
- 1952 (b) A description of planning procedures including a comprehensive master plan to
 1953 develop, implement and enforce controls to reduce the discharge of pollutants from
 1954 municipal separate storm sewers which receive discharges from areas of new
 1955 development and significant redevelopment. Such plan shall address controls to
 1956 reduce pollutants in discharges from municipal separate storm sewers after
 1957 construction is completed. Controls to reduce pollutants in discharges from municipal
 1958 separate storm sewers containing construction site runoff are addressed in subdivision
 1959 2 d (4) of this subsection;
- 1960 (c) A description of practices for operating and maintaining public streets, roads and
 1961 highways and procedures for reducing the impact on receiving waters of discharges
 1962 from municipal storm sewer systems, including pollutants discharged as a result of
 1963 deicing activities;

- 1964 (d) A description of procedures to assure that flood management projects assess the
1965 impacts on the water quality of receiving water bodies and that existing structural flood
1966 control devices have been evaluated to determine if retrofitting the device to provide
1967 additional pollutant removal from stormwater is feasible;
- 1968 (e) A description of a program to monitor pollutants in runoff from operating or closed
1969 municipal landfills or other treatment, storage or disposal facilities for municipal waste,
1970 which shall identify priorities and procedures for inspections and establishing and
1971 implementing control measures for such discharges (this program can be coordinated
1972 with the program developed under subdivision 2 d (3) of this subsection); and
- 1973 (f) A description of a program to reduce to the maximum extent practicable, pollutants
1974 in discharges from municipal separate storm sewers associated with the application of
1975 pesticides, herbicides and fertilizer that will include, as appropriate, controls such as
1976 educational activities, permits, certifications and other measures for commercial
1977 applicators and distributors, and controls for application in public right-of-ways and at
1978 municipal facilities;
- 1979 (2) A description of a program, including a schedule, to detect and remove (or require
1980 the discharger to the municipal separate storm sewer to obtain a separate state permit
1981 for) illicit discharges and improper disposal into the storm sewer. The proposed
1982 program shall include:
- 1983 (a) A description of a program, including inspections, to implement and enforce an
1984 ordinance, orders or similar means to prevent illicit discharges to the municipal
1985 separate storm sewer system; this program description shall address all types of illicit
1986 discharges, however the following category of nonstormwater discharges or flows shall
1987 be addressed where such discharges are identified by the municipality as sources of
1988 pollutants to surface waters: water line flushing, landscape irrigation, diverted stream
1989 flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm
1990 sewers, uncontaminated pumped groundwater, discharges from potable water
1991 sources, foundation drains, air conditioning condensation, irrigation water, springs,
1992 water from crawl space pumps, footing drains, lawn watering, individual residential car
1993 washing, flows from riparian habitats and wetlands, dechlorinated swimming pool
1994 discharges, and street wash water (program descriptions shall address discharges or
1995 flows from firefighting only where such discharges or flows are identified as significant
1996 sources of pollutants to surface waters);
- 1997 (b) A description of procedures to conduct on-going field screening activities during
1998 the life of the state permit, including areas or locations that will be evaluated by such
1999 field screens;
- 2000 (c) A description of procedures to be followed to investigate portions of the separate
2001 storm sewer system that, based on the results of the field screen, or other appropriate
2002 information, indicate a reasonable potential of containing illicit discharges or other
2003 sources of nonstormwater (such procedures may include: sampling procedures for
2004 constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue
2005 Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with
2006 fluorometric dyes; or conducting in storm sewer inspections where safety and other
2007 considerations allow. Such description shall include the location of storm sewers that
2008 have been identified for such evaluation);
- 2009 (d) A description of procedures to prevent, contain, and respond to spills that may
2010 discharge into the municipal separate storm sewer;

- 2011 (e) A description of a program to promote, publicize, and facilitate public reporting of
 2012 the presence of illicit discharges or water quality impacts associated with discharges
 2013 from municipal separate storm sewers;
- 2014 (f) A description of educational activities, public information activities, and other
 2015 appropriate activities to facilitate the proper management and disposal of used oil and
 2016 toxic materials; and
- 2017 (g) A description of controls to limit infiltration of seepage from municipal sanitary
 2018 sewers to municipal separate storm sewer systems where necessary;
- 2019 (3) A description of a program to monitor and control pollutants in stormwater
 2020 discharges to municipal systems from municipal landfills, hazardous waste treatment,
 2021 disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III
 2022 of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC §
 2023 11023), and industrial facilities that the municipal permit applicant determines are
 2024 contributing a substantial pollutant loading to the municipal storm sewer system. The
 2025 program shall:
- 2026 (a) Identify priorities and procedures for inspections and establishing and
 2027 implementing control measures for such discharges;
- 2028 (b) Describe a monitoring program for stormwater discharges associated with the
 2029 industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented
 2030 during the term of the state permit, including the submission of quantitative data on
 2031 the following constituents: any pollutants limited in effluent guidelines subcategories,
 2032 where applicable; any pollutant listed in an existing separate VPDES permit for a
 2033 facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen,
 2034 nitrate plus nitrite nitrogen, and any information on discharges required under
 2035 9VAC25-870-390 F and G; and
- 2036 (4) A description of a program to implement and maintain structural and nonstructural
 2037 best management practices to reduce pollutants in stormwater runoff from
 2038 construction sites to the municipal storm sewer system, which shall include:
- 2039 (a) A description of procedures for site planning that incorporate consideration of
 2040 potential water quality impacts;
- 2041 (b) A description of requirements for nonstructural and structural best management
 2042 practices;
- 2043 (c) A description of procedures for identifying priorities for inspecting sites and
 2044 enforcing control measures that consider the nature of the construction activity,
 2045 topography, and the characteristics of soils and receiving water quality; and
- 2046 (d) A description of appropriate educational and training measures for construction site
 2047 operators;
- 2048 e. Estimated reductions in loadings of pollutants from discharges of municipal storm
 2049 sewer constituents from municipal storm sewer systems expected as the result of the
 2050 municipal stormwater quality management program. The assessment shall also
 2051 identify known impacts of stormwater controls on groundwater;
- 2052 f. For each fiscal year to be covered by the state permit, a fiscal analysis of the
 2053 necessary capital and operation and maintenance expenditures necessary to
 2054 accomplish the activities of the programs under subdivisions 2 c and d of this
 2055 subsection. Such analysis shall include a description of the source of funds that are
 2056 proposed to meet the necessary expenditures, including legal restrictions on the use
 2057 of such funds;

2058 g. Where more than one legal entity submits an application, the application shall
 2059 contain a description of the roles and responsibilities of each legal entity and
 2060 procedures to ensure effective coordination; and

2061 h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this
 2062 subsection are not practicable or are not applicable, the ~~board~~ department may
 2063 exclude any operator of a discharge from a municipal separate storm sewer that is
 2064 designated under subdivision A 1 e of this section, or that is located in the counties
 2065 listed in 40 CFR Part 122 Appendix H or Appendix I (except municipal separate storm
 2066 sewers that are located in the incorporated places, townships or towns within such
 2067 counties) from such requirements. The ~~board~~ department shall not exclude the
 2068 operator of a discharge from a municipal separate storm sewer identified in 40 CFR
 2069 Part 122 Appendix F, G, H or I from any of the state permit application requirements
 2070 under this subdivision except where authorized under this subsection.

2071 D. Petitions.

2072 1. Any operator of a municipal separate storm sewer system may petition the appropriate
 2073 authority or the ~~State Water Control Board~~ department to require a separate state permit
 2074 for any discharge into the municipal separate storm sewer system.

2075 2. Any person may petition the ~~board~~ department to require a state permit for a discharge
 2076 which is composed entirely of stormwater which contributes to a violation of a water quality
 2077 standard or is a significant contributor of pollutants to surface waters.

2078 3. Any person may petition the ~~board~~ department for the designation of a large, medium
 2079 or small municipal separate storm sewer system as defined by this chapter.

2080 4. The ~~board~~ department shall make a final determination on any petition received under
 2081 this section within 90 days after receiving the petition with the exception of petitions to
 2082 designate a small MS4, in which case the ~~board~~ department shall make a final
 2083 determination on the petition within 180 days after its receipt.

2084 **9VAC25-870-390. Effluent sampling procedures.**

2085 State permit applicants for discharges from large and small municipal storm sewers or
 2086 municipal storm sewers designated under 9VAC25-870-380 A 1 e shall provide the following
 2087 information to the department, using application forms provided by the department.

2088 A. Information on stormwater discharges that is to be provided as specified in 9VAC25-870-
 2089 380. When quantitative data for a pollutant are required, the state permit applicant must collect a
 2090 sample of effluent and analyze it for the pollutant in accordance with analytical methods approved
 2091 under 40 CFR Part 136. When no analytical method is approved the state permit applicant may
 2092 use any suitable method but must provide a description of the method. When an a state permit
 2093 applicant has two or more outfalls with substantially identical effluents, the ~~board~~ department may
 2094 allow the state permit applicant to test only one outfall and report that the quantitative data also
 2095 apply to the substantially identical outfalls. The requirements in subsections E and F of this section
 2096 that a state permit applicant must provide quantitative data for certain pollutants known or
 2097 believed to be present do not apply to pollutants present in a discharge solely as the result of their
 2098 presence in intake water; however, an applicant must report such pollutants as present. Grab
 2099 samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and
 2100 grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite
 2101 samples must be used. However, a minimum of one grab sample may be taken for effluents from
 2102 holding ponds or other impoundments with a retention period greater than 24 hours. In addition,
 2103 for discharges other than stormwater discharges, the ~~board~~ department may waive composite
 2104 sampling for any outfall for which the state permit applicant demonstrates that the use of an
 2105 automatic sampler is infeasible and that the minimum of four grab samples will be a representative
 2106 sample of the effluent being discharged.

2107 B. For stormwater discharges, all samples shall be collected from the discharge resulting from
 2108 a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable
 2109 (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the
 2110 event and the total rainfall of the event should not exceed 50% from the average or median rainfall
 2111 event in that area. For all state permit applicants, a flow-weighted composite shall be taken for
 2112 either the entire discharge or for the first three hours of the discharge. The flow-weighted
 2113 composite sample for a stormwater discharge may be taken with a continuous sampler or as a
 2114 combination of a minimum of three sample aliquots taken in each hour of discharge for the entire
 2115 discharge or for the first three hours of the discharge, with each aliquot being separated by a
 2116 minimum period of 15 minutes. However, a minimum of one grab sample may be taken for
 2117 stormwater discharges from holding ponds or other impoundments with a retention period greater
 2118 than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of
 2119 aliquots is required. For stormwater discharge samples taken from discharges associated with
 2120 industrial activities, quantitative data must be reported for the grab sample taken during the first
 2121 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in
 2122 9VAC25-870-380 C 1. For all stormwater state permit applicants taking flow-weighted
 2123 composites, quantitative data must be reported for all pollutants specified in 9VAC25-870-380
 2124 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform,
 2125 and fecal streptococcus. The board department may allow or establish appropriate site-specific
 2126 sampling procedures or requirements, including sampling locations, the season in which the
 2127 sampling takes place, the minimum duration between the previous measurable storm event and
 2128 the storm event sampled, the minimum or maximum level of precipitation required for an
 2129 appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for
 2130 collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-
 2131 case basis. A state permit applicant is expected to know or have reason to believe that a pollutant
 2132 is present in an effluent based on an evaluation of the expected use, production, or storage of the
 2133 pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured
 2134 by a facility may be expected to be present in contaminated stormwater runoff from the facility.)

2135 C. Every state permit applicant must report quantitative data for every outfall for the following
 2136 pollutants:

- 2137 Biochemical oxygen demand (BOD₅)
- 2138 Chemical oxygen demand
- 2139 Total organic carbon
- 2140 Total suspended solids
- 2141 Ammonia (as N)
- 2142 Temperature (both winter and summer)
- 2143 pH

2144 D. The board department may waive the reporting requirements for individual point sources
 2145 or for a particular industry category for one or more of the pollutants listed in subsection C of this
 2146 section if the state permit applicant has demonstrated that such a waiver is appropriate because
 2147 information adequate to support issuance of a state permit can be obtained with less stringent
 2148 requirements.

2149 E. Each state permit applicant with processes in one or more primary industry category (see
 2150 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the
 2151 following pollutants in each outfall containing process wastewater:

- 2152 1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122
- 2153 Appendix D for the state permit applicant's industrial category or categories unless the
- 2154 state permit applicant qualifies as a small business. Table II of 40 CFR Part 122 Appendix

- 2155 D lists the organic toxic pollutants in each fraction. The fractions result from the sample
 2156 preparation required by the analytical procedure that uses gas chromatography/mass
 2157 spectrometry. A determination that a state permit applicant falls within a particular
 2158 industrial category for the purposes of selecting fractions for testing is not conclusive as
 2159 to the state permit applicant's inclusion in that category for any other purposes; and
- 2160 2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals,
 2161 cyanide, and total phenols).
- 2162 F. 1. Each state permit applicant must indicate whether it knows or has reason to believe that
 2163 any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and
 2164 nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations
 2165 guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant
 2166 through limitations on an indicator, the state permit applicant must report quantitative data. For
 2167 every pollutant discharged that is not so limited in an effluent limitations guideline, the state permit
 2168 applicant must either report quantitative data or briefly describe the reasons the pollutant is
 2169 expected to be discharged.
- 2170 2. Each applicant must indicate whether it knows or has reason to believe that any of the
 2171 pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants
 2172 and total phenols) for which quantitative data are not otherwise required under subsection
 2173 E of this section, is discharged from each outfall. For every pollutant expected to be
 2174 discharged in concentrations of 10 ppb or greater the state permit applicant must report
 2175 quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6
 2176 dinitrophenol, where any of these four pollutants are expected to be discharged in
 2177 concentrations of 100 ppb or greater the state permit applicant must report quantitative
 2178 data. For every pollutant expected to be discharged in concentrations less than 10 ppb,
 2179 or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol,
 2180 in concentrations less than 100 ppb, the state permit applicant must either submit
 2181 quantitative data or briefly describe the reasons the pollutant is expected to be discharged.
 2182 A state permit applicant qualifying as a small business is not required to analyze for
 2183 pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).
- 2184 G. Each state permit applicant must indicate whether it knows or has reason to believe that
 2185 any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances
 2186 and asbestos) are discharged from each outfall. For every pollutant expected to be discharged,
 2187 the state permit applicant must briefly describe the reasons the pollutant is expected to be
 2188 discharged, and report any quantitative data it has for any pollutant.
- 2189 H. Each state permit applicant must report qualitative data, generated using a screening
 2190 procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin
 2191 (TCDD) if it:
- 2192 1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-
 2193 trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-
 2194 dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate
 2195 (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or
- 2196 2. Knows or has reason to believe that TCDD is or may be present in an effluent.
- 2197 **9VAC25-870-400. Small municipal separate storm sewer systems.**
- 2198 A. Objectives of the stormwater regulations for small MS4s.
- 2199 1. Subsections A through G of this section are written in a "readable regulation" format
 2200 that includes both rule requirements and guidance. The recommended guidance is
 2201 distinguished from the regulatory requirements by putting the guidance in a separate
 2202 subdivision headed by the word "Note."

- 2203 2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this
 2204 portion of the stormwater program is to designate additional sources that need to be
 2205 regulated to protect water quality and to establish a comprehensive stormwater program
 2206 to regulate these sources.
- 2207 3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by
 2208 human activities can harm surface water resources in several ways including by changing
 2209 natural hydrologic patterns and by elevating pollutant concentrations and loadings.
 2210 Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment,
 2211 suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding
 2212 substances, and floatables.
- 2213 4. The ~~board~~ department strongly encourages partnerships and the watershed approach
 2214 as the management framework for efficiently, effectively, and consistently protecting and
 2215 restoring aquatic ecosystems and protecting public health.
- 2216 B. As an operator of a small MS4, am I regulated under the state's stormwater program?
- 2217 1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated
 2218 if you operate a small MS4, including but not limited to systems operated by federal, state,
 2219 tribal, and local governments, including the Virginia Department of Transportation; and
- 2220 a. Your small MS4 is located in an urbanized area as determined by the latest
 2221 decennial census by the Bureau of the Census (If your small MS4 is not located
 2222 entirely within an urbanized area, only the portion that is within the urbanized area is
 2223 regulated); or
- 2224 b. You are designated by the ~~board~~ department, including where the designation is
 2225 pursuant to subdivisions C 3 a and b of this section or is based upon a petition under
 2226 9VAC25-870-380 D.
- 2227 2. You may be the subject of a petition to the ~~board~~ department to require a state permit
 2228 for your discharge of stormwater. If the ~~board~~ department determines that you need a
 2229 state permit, you are required to comply with subsections C through E of this section.
- 2230 3. The ~~board~~ department may waive the requirements otherwise applicable to you if you
 2231 meet the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this
 2232 section, you may subsequently be required to seek coverage under a state permit in
 2233 accordance with subdivision C 1 of this section if circumstances change. (See also
 2234 subdivision E 2 of this section).
- 2235 4. The ~~board~~ department may waive state permit coverage if your MS4 serves a population
 2236 of less than 1,000 within the urbanized area and you meet the following criteria:
- 2237 a. Your system is not contributing substantially to the pollutant loadings of a physically
 2238 interconnected MS4 that is regulated by the ~~board~~ department; and
- 2239 b. If you discharge any pollutants that have been identified as a cause of impairment
 2240 of any water body to which you discharge, stormwater controls are not needed based
 2241 on wasteload allocations that are part of an approved "total maximum daily load"
 2242 (TMDL) that addresses the pollutants of concern.
- 2243 5. The ~~board~~ department may waive state permit coverage if your MS4 serves a population
 2244 under 10,000 and you meet the following criteria:
- 2245 a. The ~~board~~ department has evaluated all surface waters, including small streams,
 2246 tributaries, lakes, and ponds, that receive a discharge from your MS4;
- 2247 b. For all such waters, the ~~board~~ department has determined that stormwater controls
 2248 are not needed based on wasteload allocations that are part of an approved TMDL
 2249 that addresses the pollutants of concern or, if a TMDL has not been developed or

- 2250 approved, an equivalent analysis that determines sources and allocations for the
 2251 pollutants of concern;
- 2252 c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include
 2253 biochemical oxygen demand (BOD), sediment or a parameter that addresses
 2254 sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and
 2255 grease, and any pollutant that has been identified as a cause of impairment of any
 2256 water body that will receive a discharge from your MS4; and
- 2257 d. The ~~board~~ department has determined that future discharges from your MS4 do not
 2258 have the potential to result in exceedances of water quality standards, including
 2259 impairment of designated uses, or other significant water quality impacts, including
 2260 habitat and biological impacts.
- 2261 C. If I am an operator of a regulated small MS4, how do I apply for a state permit and when
 2262 do I have to apply?
- 2263 1. If you operate a regulated small MS4 under subsection B of this section, you must seek
 2264 coverage under a state permit issued by the ~~board~~ department.
- 2265 2. You must seek authorization to discharge under a general or individual state permit, as
 2266 follows:
- 2267 a. If the ~~board~~ department has issued a general permit applicable to your discharge
 2268 and you are seeking coverage under the general permit, you must submit a registration
 2269 statement that includes the information on your best management practices and
 2270 measurable goals required by subdivision D 4 of this section. You may file your own
 2271 registration statement, or you and other municipalities or governmental entities may
 2272 jointly submit a registration statement. If you want to share responsibilities for meeting
 2273 the minimum measures with other municipalities or governmental entities, you must
 2274 submit a registration statement that describes which minimum measures you will
 2275 implement and identify the entities that will implement the other minimum measures
 2276 within the area served by your MS4. The general permit will explain any other steps
 2277 necessary to obtain permit authorization.
- 2278 b. (1) If you are seeking authorization to discharge under an individual state permit
 2279 and wish to implement a program under subsection D of this section, you must submit
 2280 an application to the ~~board~~ department that includes the information required under
 2281 9VAC25-870-360 F and subdivision D 4 of this section, an estimate of square mileage
 2282 served by your small MS4, and any additional information that the ~~board~~ department
 2283 requests. A storm sewer map that satisfies the requirement of subdivision D 2 c (1) of
 2284 this section will satisfy the map requirement in 9VAC25-870-360 F 7.
- 2285 (2) If you are seeking authorization to discharge under an individual state permit and
 2286 wish to implement a program that is different from the program under subsection D of
 2287 this section, you will need to comply with the state permit application requirements of
 2288 9VAC25-870-380 C. You must submit both parts of the application requirements in
 2289 9VAC25-870-380 C 1 and 2 by March 10, 2003. You do not need to submit the
 2290 information required by 9VAC25-870-380 C 1 b and C 2 regarding your legal authority,
 2291 unless you intend for the state permit writer to take such information into account when
 2292 developing your other state permit conditions.
- 2293 (3) If allowed by the ~~board~~ department, you and another regulated entity may jointly
 2294 apply under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees
 2295 under an individual state permit.
- 2296 c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a
 2297 state permit and that other MS4 is willing to have you participate in its stormwater

- 2298 program, you and the other MS4 may jointly seek a modification of the other MS4 state
 2299 permit to include you as a limited state co-permittee. As a limited state co-permittee,
 2300 you will be responsible for compliance with the state permit's conditions applicable to
 2301 your jurisdiction. If you choose this option you will need to comply with the state permit
 2302 application requirements of 9VAC25-870-380, rather than the requirements of
 2303 subsection D of this section. You do not need to comply with the specific application
 2304 requirements of 9VAC25-870-380 C 1 c and d and 9VAC25-870-380 C 2 c (discharge
 2305 characterization). You may satisfy the requirements in 9VAC25-870-380 C 1 e and 2
 2306 d (identification of a management program) by referring to the other MS4's stormwater
 2307 management program.
- 2308 d. NOTE: In referencing an MS4's stormwater management program, you should
 2309 briefly describe how the existing plan will address discharges from your small MS4 or
 2310 would need to be supplemented in order to adequately address your discharges. You
 2311 should also explain your role in coordinating stormwater pollutant control activities in
 2312 your MS4 and detail the resources available to you to accomplish the plan.
- 2313 3. If you operate a regulated small MS4:
- 2314 a. Designated under subdivision B 1 a of this section, you must apply for coverage
 2315 under a state permit or apply for a modification of an existing state permit under
 2316 subdivision 2 c of this subsection within 180 days of notice, unless the ~~board~~
 2317 department grants a later date.
- 2318 b. Designated under subdivision B 1 b of this section, you must apply for coverage
 2319 under a state permit or apply for a modification of an existing state permit under
 2320 subdivision 2 c of this subsection within 180 days of notice, unless the ~~board~~
 2321 department grants a later date.
- 2322 D. As an operator of a regulated small MS4, what will my MS4 state permit require?
- 2323 1. Your MS4 state permit will require at a minimum that you develop, implement, and
 2324 enforce a stormwater management program designed to reduce the discharge of
 2325 pollutants from your MS4 to the maximum extent practicable (MEP), to protect water
 2326 quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,
 2327 the Virginia Stormwater Management Act, and the State Water Control Law. Your
 2328 stormwater management program must include the minimum control measures described
 2329 in subdivision 2 of this subsection unless you apply for a state permit under 9VAC25-870-
 2330 380 C. For purposes of this section, narrative effluent limitations requiring implementation
 2331 of best management practices (BMPs) are generally the most appropriate form of effluent
 2332 limitations when designed to satisfy technology requirements (including reductions of
 2333 pollutants to the maximum extent practicable) and to protect water quality. Implementation
 2334 of best management practices consistent with the provisions of the stormwater
 2335 management program required pursuant to this section and the provisions of the state
 2336 permit required pursuant to subsection C of this section constitutes compliance with the
 2337 standard of reducing pollutants to the maximum extent practicable. The ~~board~~ department
 2338 will specify a time period of up to five years from the date of state permit issuance for you
 2339 to develop and implement your program.
- 2340 2. Minimum control measures.
- 2341 a. Public education and outreach on stormwater impacts.
- 2342 (1) You must implement a public education program to distribute educational materials
 2343 to the community or conduct equivalent outreach activities about the impacts of
 2344 stormwater discharges on water bodies and the steps that the public can take to
 2345 reduce pollutants in stormwater runoff.

2346 (2) NOTE: You may use stormwater educational materials provided by the state, your
 2347 tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The
 2348 public education program should inform individuals and households about the steps
 2349 they can take to reduce stormwater pollution, such as ensuring proper septic system
 2350 maintenance, ensuring the proper use and disposal of landscape and garden
 2351 chemicals including fertilizers and pesticides, protecting and restoring riparian
 2352 vegetation, and properly disposing of used motor oil or household hazardous wastes.
 2353 The ~~board~~ department recommends that the program inform individuals and groups
 2354 how to become involved in local stream and beach restoration activities as well as
 2355 activities that are coordinated by youth service and conservation corps or other citizen
 2356 groups. The ~~board~~ department recommends that the public education program be
 2357 tailored, using a mix of locally appropriate strategies, to target specific audiences and
 2358 communities. Examples of strategies include: distributing brochures or fact sheets,
 2359 sponsoring speaking engagements before community groups, providing public service
 2360 announcements, implementing educational programs targeted at school-age children,
 2361 and conducting community-based projects such as storm drain stenciling, and
 2362 watershed and beach cleanups. In addition, the ~~board~~ department recommends that
 2363 some of the materials or outreach programs be directed toward targeted groups of
 2364 commercial, industrial, and institutional entities likely to have significant stormwater
 2365 impacts. For example, providing information to restaurants on the impact of grease
 2366 clogging storm drains and to garages on the impact of oil discharges. You are
 2367 encouraged to tailor your outreach program to address the viewpoints and concerns
 2368 of all communities, particularly minority and disadvantaged communities, as well as
 2369 any special concerns relating to children.

2370 b. Public involvement/participation.

2371 (1) You must, at a minimum, comply with state, tribal, and local public notice
 2372 requirements when implementing a public involvement/participation program.

2373 (2) The ~~board~~ department recommends that the public be included in developing,
 2374 implementing, and reviewing your stormwater management program and that the
 2375 public participation process should make efforts to reach out and engage all economic
 2376 and ethnic groups. Opportunities for members of the public to participate in program
 2377 development and implementation include serving as citizen representatives on a local
 2378 stormwater management panel, attending public hearings, working as citizen
 2379 volunteers to educate other individuals about the program, assisting in program
 2380 coordination with other pre-existing programs, or participating in volunteer monitoring
 2381 efforts. (Citizens should obtain approval where necessary for lawful access to
 2382 monitoring sites.)

2383 c. Illicit discharge detection and elimination.

2384 (1) You must develop, implement and enforce a program to detect and eliminate illicit
 2385 discharges (as defined in 9VAC25-870-10) into your small MS4.

2386 (2) You must:

2387 (a) Develop, if not already completed, a storm sewer system map, showing the location
 2388 of all outfalls and the names and location of all surface waters that receive discharges
 2389 from those outfalls;

2390 (b) To the extent allowable under state, tribal or local law, effectively prohibit, through
 2391 ordinance or other regulatory mechanism, nonstormwater discharges into your storm
 2392 sewer system and implement appropriate enforcement procedures and actions;

2393 (c) Develop and implement a plan to detect and address nonstormwater discharges,
 2394 including illegal dumping, to your system; and

- 2395 (d) Inform public employees, businesses, and the general public of hazards associated
2396 with illegal discharges and improper disposal of waste.
- 2397 (3) You need to address the following categories of nonstormwater discharges or flows
2398 (i.e., illicit discharges) only if you identify them as significant contributors of pollutants
2399 to your small MS4: water line flushing, landscape irrigation, diverted stream flows,
2400 rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR
2401 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water
2402 sources, foundation drains, air conditioning condensation, irrigation water, springs,
2403 water from crawl space pumps, footing drains, lawn watering, individual residential car
2404 washing, flows from riparian habitats and wetlands, dechlorinated swimming pool
2405 discharges, and street wash water. (Discharges or flows from fire-fighting activities are
2406 excluded from the effective prohibition against nonstormwater and need only be
2407 addressed where they are identified as significant sources of pollutants to surface
2408 waters.)
- 2409 (4) NOTE: The ~~board~~ department recommends that the plan to detect and address
2410 illicit discharges include the following four components: (i) procedures for locating
2411 priority areas likely to have illicit discharges, (ii) procedures for tracing the source of
2412 an illicit discharge, (iii) procedures for removing the source of the discharge, and (iv)
2413 procedures for program evaluation and assessment. The ~~board~~ department
2414 recommends visually screening outfalls during dry weather and conducting field tests
2415 of selected pollutants as part of the procedures for locating priority areas. Illicit
2416 discharge education actions may include storm drain stenciling; a program to promote,
2417 publicize, and facilitate public reporting of illicit connections or discharges; and
2418 distribution of outreach materials.
- 2419 d. Construction site stormwater runoff control.
- 2420 (1) You must develop, implement, and enforce a program to reduce pollutants in any
2421 stormwater runoff to your small MS4 from construction activities that result in a land
2422 disturbance of greater than or equal to one acre, or equal to or greater than 2,500
2423 square feet in all areas of the jurisdictions designated as subject to the Chesapeake
2424 Bay Preservation Area Designation and Management Regulations adopted pursuant
2425 to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from
2426 construction activity disturbing less than one acre must be included in your program if
2427 that construction activity is part of a larger common plan of development or sale that
2428 would disturb one acre or more. If the ~~board~~ department waives requirements for
2429 stormwater discharges associated with small construction activity in accordance with
2430 the definition in 9VAC25-870-10, you are not required to develop, implement, and/or
2431 enforce a program to reduce pollutant discharges from such sites.
- 2432 (2) Your program must include the development and implementation of, at a minimum:
- 2433 (a) An ordinance or other regulatory mechanism to require erosion and sediment
2434 controls, as well as sanctions to ensure compliance, to the extent allowable under
2435 state, tribal, or local law;
- 2436 (b) Requirements for construction site operators to implement appropriate erosion and
2437 sediment control best management practices;
- 2438 (c) Requirements for construction site operators to control waste such as discarded
2439 building materials, concrete truck washout, chemicals, litter, and sanitary waste at the
2440 construction site that may cause adverse impacts to water quality;
- 2441 (d) Procedures for site plan review which incorporate consideration of potential water
2442 quality impacts;

- 2443 (e) Procedures for receipt and consideration of information submitted by the public;
 2444 and
- 2445 (f) Procedures for site inspection and enforcement of control measures.
- 2446 (3) NOTE: Examples of sanctions to ensure compliance include nonmonetary
 2447 penalties, fines, bonding requirements and/or state permit denials for noncompliance.
 2448 The ~~board~~ department recommends that procedures for site plan review include the
 2449 review of individual pre-construction site plans to ensure consistency with VESCP
 2450 requirements. Procedures for site inspections and enforcement of control measures
 2451 could include steps to identify priority sites for inspection and enforcement based on
 2452 the nature of the construction activity, topography, and the characteristics of soils and
 2453 receiving water quality. You are encouraged to provide appropriate educational and
 2454 training measures for construction site operators. You may wish to require a
 2455 stormwater pollution prevention plan for construction sites within your jurisdiction that
 2456 discharge into your system. (See 9VAC25-870-460 L and subdivision E 2 of this
 2457 section.) The ~~board~~ department may recognize that another government entity may
 2458 be responsible for implementing one or more of the minimum measures on your behalf.
- 2459 e. Post-construction stormwater management in new development and
 2460 redevelopment.
- 2461 (1) You must develop, implement, and enforce a program to address stormwater runoff
 2462 from new development and redevelopment projects that disturb greater than or equal
 2463 to one acre, including projects less than one acre that are part of a larger common
 2464 plan of development or sale, that discharge into your small MS4. Your program must
 2465 ensure that controls are in place that would prevent or minimize water quality impacts.
- 2466 (2) You must:
- 2467 (a) Develop and implement strategies that include a combination of structural and/or
 2468 nonstructural best management practices (BMPs) appropriate for your community;
- 2469 (b) Use an ordinance or other regulatory mechanism to address post-construction
 2470 runoff from new development and redevelopment projects to the extent allowable
 2471 under state, tribal or local law; and
- 2472 (c) Ensure adequate long-term operation and maintenance of BMPs.
- 2473 (3) NOTE: If water quality impacts are considered from the beginning stages of a
 2474 project, new development and potentially redevelopment provide more opportunities
 2475 for water quality protection. The ~~board~~ department recommends that the BMPs chosen
 2476 be appropriate for the local community, minimize water quality impacts, and attempt
 2477 to maintain pre-development runoff conditions. In choosing appropriate BMPs, the
 2478 ~~board~~ department encourages you to participate in locally based watershed planning
 2479 efforts that attempt to involve a diverse group of stakeholders, including interested
 2480 citizens. When developing a program that is consistent with this measure's intent, the
 2481 ~~board~~ department recommends that you adopt a planning process that identifies the
 2482 municipality's program goals (e.g., minimize water quality impacts resulting from post-
 2483 construction runoff from new development and redevelopment), implementation
 2484 strategies (e.g., adopt a combination of structural and/or nonstructural BMPs),
 2485 operation and maintenance policies and procedures, and enforcement procedures. In
 2486 developing your program, you should consider assessing existing ordinances, policies,
 2487 programs and studies that address stormwater runoff quality. In addition to assessing
 2488 these existing documents and programs, you should provide opportunities to the public
 2489 to participate in the development of the program. Nonstructural BMPs are preventative
 2490 actions that involve management and source controls such as: (i) policies and
 2491 ordinances that provide requirements and standards to direct growth to identified

2492 areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or
 2493 increase open space (including a dedicated funding source for open space
 2494 acquisition), provide buffers along sensitive water bodies, minimize impervious
 2495 surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances
 2496 that encourage infill development in higher density urban areas, and areas with
 2497 existing infrastructure; (iii) education programs for developers and the public about
 2498 project designs that minimize water quality impacts; and (iv) measures such as
 2499 minimization of percent impervious area after development and minimization of directly
 2500 connected impervious areas. Structural BMPs include: storage practices such as wet
 2501 ponds and extended-detention outlet structures; filtration practices such as grassed
 2502 swales, sand filters and filter strips; and infiltration practices such as infiltration basins
 2503 and infiltration trenches. The ~~board~~ department recommends that you ensure the
 2504 appropriate implementation of the structural BMPs by considering some or all of the
 2505 following: pre-construction review of BMP designs; inspections during construction to
 2506 verify BMPs are built as designed; post-construction inspection and maintenance of
 2507 BMPs; and penalty provisions for the noncompliance with design, construction or
 2508 operation and maintenance. Stormwater technologies are constantly being improved,
 2509 and the ~~board~~ department recommends that your requirements be responsive to these
 2510 changes, developments or improvements in control technologies.

2511 f. Pollution prevention/good housekeeping for municipal operations.

2512 (1) You must develop and implement an operation and maintenance program that
 2513 includes a training component and has the ultimate goal of preventing or reducing
 2514 pollutant runoff from municipal operations. Using training materials that are available
 2515 from EPA, state, tribe, or other organizations, your program must include employee
 2516 training to prevent and reduce stormwater pollution from activities such as park and
 2517 open space maintenance, fleet and building maintenance, new construction and land
 2518 disturbances, and stormwater system maintenance.

2519 (2) NOTE: The ~~board~~ department recommends that, at a minimum, you consider the
 2520 following in developing your program: maintenance activities, maintenance schedules,
 2521 and long-term inspection procedures for structural and nonstructural stormwater
 2522 controls to reduce floatables and other pollutants discharged from your separate storm
 2523 sewers; controls for reducing or eliminating the discharge of pollutants from streets,
 2524 roads, highways, municipal parking lots, maintenance and storage yards, fleet or
 2525 maintenance shops with outdoor storage areas, salt/sand storage locations and snow
 2526 disposal areas operated by you, and waste transfer stations; procedures for properly
 2527 disposing of waste removed from the separate storm sewers and areas listed above
 2528 (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways
 2529 to ensure that new flood management projects assess the impacts on water quality
 2530 and examine existing projects for incorporating additional water quality protection
 2531 devices or practices. Operation and maintenance should be an integral component of
 2532 all stormwater management programs. This measure is intended to improve the
 2533 efficiency of these programs and require new programs where necessary. Properly
 2534 developed and implemented operation and maintenance programs reduce the risk of
 2535 water quality problems.

2536 3. If an existing VSMP requires you to implement one or more of the minimum control
 2537 measures of subdivision 2 of this subsection, the ~~board~~ department may include conditions
 2538 in your state permit that direct you to follow that VSMP's requirements rather than the
 2539 requirements of subdivision 2 of this subsection. A VSMP is a local, state or tribal
 2540 municipal stormwater management program that imposes, at a minimum, the relevant
 2541 requirements of subdivision 2 of this subsection.

- 2542 4. a. In your state permit application (either a registration statement for coverage under a
 2543 general permit or an individual permit application), you must identify and submit to the
 2544 board department the following information:
- 2545 (1) The best management practices (BMPs) that you or another entity will implement
 2546 for each of the stormwater minimum control measures provided in subdivision 2 of this
 2547 subsection;
- 2548 (2) The measurable goals for each of the BMPs including, as appropriate, the months
 2549 and years in which you will undertake required actions, including interim milestones
 2550 and the frequency of the action; and
- 2551 (3) The person or persons responsible for implementing or coordinating your
 2552 stormwater management program.
- 2553 b. If you obtain coverage under a general permit, you are not required to meet any
 2554 measurable goals identified in your registration statement in order to demonstrate
 2555 compliance with the minimum control measures in subdivisions 2 c through f of this
 2556 subsection unless, prior to submitting your registration statement, EPA or the board
 2557 department has provided or issued a menu of BMPs that addresses each such
 2558 minimum measure. Even if no regulatory authority issues the menu of BMPs, however,
 2559 you still must comply with other requirements of the general permit, including good
 2560 faith implementation of BMPs designed to comply with the minimum measures.
- 2561 c. NOTE: Either EPA or the board department will provide a menu of BMPs. You may
 2562 choose BMPs from the menu or select others that satisfy the minimum control
 2563 measures.
- 2564 5. a. You must comply with any more stringent effluent limitations in your state permit,
 2565 including state permit requirements that modify or are in addition to the minimum control
 2566 measures based on an approved total maximum daily load (TMDL) or equivalent analysis.
 2567 The board department may include such more stringent limitations based on a TMDL or
 2568 equivalent analysis that determines such limitations are needed to protect water quality.
- 2569 b. NOTE: The board department strongly recommends that until the evaluation of the
 2570 stormwater program in subsection G of this section, no additional requirements
 2571 beyond the minimum control measures be imposed on regulated small MS4s without
 2572 the agreement of the operator of the affected small MS4, except where an approved
 2573 TMDL or equivalent analysis provides adequate information to develop more specific
 2574 measures to protect water quality.
- 2575 6. You must comply with other applicable state permit requirements, standards and
 2576 conditions established in the individual or general permit developed consistent with the
 2577 provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.
- 2578 7. Evaluation and assessment.
- 2579 a. You must evaluate program compliance, the appropriateness of your identified best
 2580 management practices, and progress towards achieving your identified measurable
 2581 goals. The board department may determine monitoring requirements for you in
 2582 accordance with monitoring plans appropriate to your watershed. Participation in a
 2583 group monitoring program is encouraged.
- 2584 b. You must keep records required by the state permit for at least three years. You
 2585 must submit your records to the department only when specifically asked to do so. You
 2586 must make your records, including a description of your stormwater management
 2587 program, available to the public at reasonable times during regular business hours
 2588 (see 9VAC25-870-340 for confidentiality provision). You may assess a reasonable
 2589 charge for copying. You may require a member of the public to provide advance notice.

2590 c. Unless you are relying on another entity to satisfy your state permit obligations under
 2591 subdivision E 1 of this section, you must submit annual reports to the department for
 2592 your first state permit term. For subsequent state permit terms, you must submit
 2593 reports in years two and four unless the department requires more frequent reports.
 2594 As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance
 2595 with this subsection shall be submitted electronically by the owner, operator, or the
 2596 duly authorized representative of the small MS4 to the department in compliance with
 2597 this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
 2598 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
 2599 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
 2600 not intended to undo existing requirements for electronic reporting. Prior to this date,
 2601 and independent of Part XI of 9VAC25-31, the owner, operator, or the duly authorized
 2602 representative of the small MS4 may be required to report electronically if specified by
 2603 a particular permit. Your report must include:

- 2604 (1) The status of compliance with state permit conditions, an assessment of the
 2605 appropriateness of your identified best management practices and progress towards
 2606 achieving your identified measurable goals for each of the minimum control measures;
 2607 (2) Results of information collected and analyzed, including monitoring data, if any,
 2608 during the reporting period;
 2609 (3) A summary of the stormwater activities you plan to undertake during the next
 2610 reporting cycle;
 2611 (4) A change in any identified best management practices or measurable goals for any
 2612 of the minimum control measures; and
 2613 (5) Notice that you are relying on another governmental entity to satisfy some of your
 2614 state permit obligations (if applicable).

2615 E. As an operator of a regulated small MS4, may I share the responsibility to implement the
 2616 minimum control measures with other entities?

2617 1. You may rely on another entity to satisfy your state permit obligations to implement a
 2618 minimum control measure if:

- 2619 a. The other entity, in fact, implements the control measure;
- 2620 b. The particular control measure, or component thereof, is at least as stringent as the
 2621 corresponding state permit requirement; and
- 2622 c. The other entity agrees to implement the control measure on your behalf. In the
 2623 reports you must submit under subdivision D 7 c of this section, you must also specify
 2624 that you rely on another entity to satisfy some of your state permit obligations. If you
 2625 are relying on another governmental entity regulated under the state permit program
 2626 to satisfy all of your state permit obligations, including your obligation to file periodic
 2627 reports required by subdivision D 7 c of this section, you must note that fact in your
 2628 registration statement, but you are not required to file the periodic reports. You remain
 2629 responsible for compliance with your state permit obligations if the other entity fails to
 2630 implement the control measure (or component thereof). Therefore, the ~~board~~
 2631 department encourages you to enter into a legally binding agreement with that entity
 2632 if you want to minimize any uncertainty about compliance with your state permit.

2633 2. In some cases, the ~~board~~ department may recognize, either in your individual permit or
 2634 in a general permit, that another governmental entity is responsible under a state permit
 2635 for implementing one or more of the minimum control measures for your small MS4. Where
 2636 the ~~board~~ department does so, you are not required to include such minimum control
 2637 measure(s) in your stormwater management program. Your state permit may be reopened

2638 and modified to include the requirement to implement a minimum control measure if the
2639 entity fails to implement it.

2640 F. As an operator of a regulated small MS4, what happens if I don't comply with the application
2641 or state permit requirements in subsections C through E of this section?

2642 State permits are enforceable under the Clean Water Act and the Virginia Stormwater
2643 Management Act. Violators may be subject to the enforcement actions and penalties described
2644 in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-
2645 44.15:48 of the Code of Virginia. Compliance with a state permit issued pursuant to § 402 of the
2646 Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306,
2647 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human
2648 health. If you are covered as a state co-permittee under an individual permit or under a general
2649 permit by means of a joint registration statement, you remain subject to the enforcement actions
2650 and penalties for the failure to comply with the terms of the state permit in your jurisdiction except
2651 as set forth in subdivision E 2 of this section.

2652 G. Will the small MS4 stormwater program regulations at subsections B through F of this
2653 section change in the future?

2654 EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation
2655 of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data
2656 from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from
2657 stormwater, and the effectiveness of best management practices (BMPs), as well as other
2658 relevant information sources.

2659 **9VAC25-870-410. General permits.**

2660 A. The ~~board~~ department may issue a general permit in accordance with the following:

2661 1. The general permit shall be written to cover one or more categories or subcategories of
2662 discharges, except those covered by individual permits, within a geographic area. The
2663 area should correspond to existing geographic or political boundaries, such as:

2664 a. Designated planning areas under §§ 208 and 303 of CWA;

2665 b. Sewer districts or sewer authorities;

2666 c. City, county, or state political boundaries;

2667 d. State highway systems;

2668 e. Standard metropolitan statistical areas as defined by the Office of Management and
2669 Budget;

2670 f. Urbanized areas as designated by the Bureau of the Census according to criteria in
2671 30 FR 15202 (May 1, 1974); or

2672 g. Any other appropriate division or combination of boundaries.

2673 2. The general permit may be written to regulate one or more categories within the area
2674 described in subdivision 1 of this subsection, where the sources within a covered
2675 subcategory of discharges are stormwater point sources.

2676 3. Where sources within a specific category of dischargers are subject to water quality-
2677 based limits imposed pursuant to 9VAC25-870-460, the sources in that specific category
2678 or subcategory shall be subject to the same water quality-based effluent limitations.

2679 4. The general permit must clearly identify the applicable conditions for each category or
2680 subcategory of dischargers covered by the permit.

2681 5. The general permit may exclude specified sources or areas from coverage.

2682 B. Administration.

- 2683 1. General permits may be issued, modified, revoked and reissued, or terminated in
 2684 accordance with applicable requirements of this chapter.
- 2685 2. Authorization to discharge.
- 2686 a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers
 2687 seeking coverage under a general permit shall submit to the department a written
 2688 notice of intent to be covered by the general permit. A discharger who fails to submit
 2689 a notice of intent in accordance with the terms of the state permit is not authorized to
 2690 discharge, under the terms of the general permit unless the general permit, in
 2691 accordance with subdivision 2 e of this subsection, contains a provision that a notice
 2692 of intent is not required or the ~~board~~ department notifies a discharger (or treatment
 2693 works treating domestic sewage) that it is covered by a general permit in accordance
 2694 with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to
 2695 be covered in accordance with general permit requirements fulfills the requirements
 2696 for permit applications for the purposes of this chapter. As of the start date in Table 1
 2697 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subdivision
 2698 shall be submitted electronically by the discharger (or treatment works treating
 2699 domestic sewage) to the department in compliance with this subdivision and 40 CFR
 2700 Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part
 2701 XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System
 2702 (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing
 2703 requirements for electronic reporting. Prior to this date, and independent of Part XI of
 2704 9VAC25-31, dischargers (or treatment works treating domestic sewage) may be
 2705 required to report electronically if specified by a particular permit.
- 2706 b. The contents of the notice of intent shall be specified in the general permit and shall
 2707 require the submission of information necessary for adequate program
 2708 implementation, including at a minimum, the legal name and address of the owner or
 2709 operator, the facility name and address, type of facility or discharges, and the receiving
 2710 stream or streams, and other required data elements as identified in Appendix A to 40
 2711 CFR Part 127 as adopted by reference in 9VAC25-31-1030. All notices of intent shall
 2712 be signed in accordance with 9VAC25-870-370.
- 2713 c. General permits shall specify the deadlines for submitting notices of intent to be
 2714 covered and the date or dates when a discharger is authorized to discharge under the
 2715 state permit.
- 2716 d. General permits shall specify whether a discharger that has submitted a complete
 2717 and timely notice of intent to be covered in accordance with the general permit and
 2718 that is eligible for coverage under the state permit, is authorized to discharge in
 2719 accordance with the state permit either upon receipt of the notice of intent by the
 2720 department, after a waiting period specified in the general permit, on a date specified
 2721 in the general permit, or upon receipt of notification of inclusion by the ~~board~~
 2722 department. Coverage may be terminated or revoked in accordance with subdivision
 2723 3 of this subsection.
- 2724 e. Stormwater discharges associated with small construction activity may, at the
 2725 discretion of the ~~board~~ department, be authorized to discharge under a general permit
 2726 without submitting a notice of intent where the ~~board~~ department finds that a notice of
 2727 intent requirement would be inappropriate. In making such a finding, the ~~board~~
 2728 department shall consider the (i) type of discharge, (ii) expected nature of the
 2729 discharge, (iii) potential for toxic and conventional pollutants in the discharges, (iv)
 2730 expected volume of the discharges, (v) other means of identifying discharges covered
 2731 by the state permit, and (vi) estimated number of discharges to be covered by the state

2732 permit. The ~~board~~ department shall provide in the public notice of the general permit
2733 the reasons for not requiring a notice of intent.

2734 f. The ~~board~~ department may notify a discharger that it is covered by a general permit,
2735 even if the discharger has not submitted a notice of intent to be covered. A discharger
2736 so notified may request an individual permit under subdivision 3 c of this subsection.

2737 3. Requiring an individual permit.

2738 a. The ~~board~~ department may require any discharger authorized by a general permit
2739 to apply for and obtain an individual permit. Any interested person may request the
2740 ~~board~~ department to take action under this subdivision. Cases where an individual
2741 permit may be required include the following:

2742 (1) The discharger is not in compliance with the conditions of the general permit;

2743 (2) A change has occurred in the availability of demonstrated technology or practices
2744 for the control or abatement of pollutants applicable to the point source;

2745 (3) Effluent limitation guidelines are promulgated for point sources covered by the
2746 general permit;

2747 (4) A water quality management plan, established by the ~~State Water Control Board~~
2748 department pursuant to 9VAC25-720, containing requirements applicable to such
2749 point sources is approved;

2750 (5) Circumstances have changed since the time of the request to be covered so that
2751 the discharger is no longer appropriately controlled under the general permit, or either
2752 a temporary or permanent reduction or elimination of the authorized discharge is
2753 necessary;

2754 (6) The discharge(s) is a significant contributor of pollutants. In making this
2755 determination, the ~~board~~ department may consider the following factors:

2756 (a) The location of the discharge with respect to surface waters;

2757 (b) The size of the discharge;

2758 (c) The quantity and nature of the pollutants discharged to surface waters; and

2759 (d) Other relevant factors;

2760 b. State permits required on a case-by-case basis.

2761 (1) The ~~board~~ department may determine, on a case-by-case basis, that certain
2762 stormwater discharges, and certain other facilities covered by general permits that do
2763 not generally require an individual permit may be required to obtain an individual permit
2764 because of their contributions to water pollution.

2765 (2) Whenever the ~~board~~ department decides that an individual permit is required under
2766 this subsection, except as provided in subdivision 3 b (3) of this subsection, the ~~board~~
2767 department shall notify the discharger in writing of that decision and the reasons for it,
2768 and shall send an application form with the notice. The discharger must apply for a
2769 permit within 60 days of notice, unless permission for a later date is granted by the
2770 ~~board~~ department. The question whether the designation was proper will remain open
2771 for consideration during the public comment period for the draft state permit and in any
2772 subsequent public hearing.

2773 (3) Prior to a case-by-case determination that an individual permit is required for a
2774 stormwater discharge under this subsection, the ~~board~~ department may require the
2775 discharger to submit a state permit application or other information regarding the
2776 discharge under the Act and § 308 of the CWA. In requiring such information, the
2777 ~~board~~ department shall notify the discharger in writing and shall send an application
2778 form with the notice. The discharger must apply for a state permit under 9VAC25-870-

2779 380 A 1 within 60 days of notice or under 9VAC25-870-380 A 8 within 180 days of
 2780 notice, unless permission for a later date is granted by the ~~board~~ department. The
 2781 question whether the initial designation was proper will remain open for consideration
 2782 during the public comment period for the draft state permit and in any subsequent
 2783 public hearing.

2784 c. Any owner or operator authorized by a general permit may request to be excluded
 2785 from the coverage of the general permit by applying for an individual permit. The owner
 2786 or operator shall submit an application under 9VAC25-870-360 with reasons
 2787 supporting the request. The request shall be processed under the applicable parts of
 2788 this chapter. The request shall be granted by issuing of an individual permit if the
 2789 reasons cited by the owner or operator are adequate to support the request.

2790 d. When an individual permit is issued to an owner or operator otherwise subject to a
 2791 general permit, the applicability of the general permit to the individual permit state
 2792 permittee is automatically terminated on the effective date of the individual permit.

2793 e. A source excluded from a general permit solely because it already has an individual
 2794 permit may request that the individual permit be revoked, and that it be covered by the
 2795 general permit. Upon revocation of the individual permit, the general permit shall apply
 2796 to the source.

2797 **9VAC25-870-420. New sources and new discharges.**

2798 A. Criteria for new source determination.

2799 1. Except as otherwise provided in an applicable new source performance standard, a
 2800 source is a new source if it meets the definition of new source in this chapter and

2801 a. It is constructed at a site at which no other source is located;

2802 b. It totally replaces the process or production equipment that causes the discharge of
 2803 pollutants at an existing source; or

2804 c. Its processes are substantially independent of an existing source at the same site.
 2805 In determining whether these processes are substantially independent, the ~~board~~
 2806 department shall consider such factors as the extent to which the new facility is
 2807 integrated with the existing plant and the extent to which the new facility is engaged in
 2808 the same general type of activity as the existing source.

2809 2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a
 2810 new source only if a new source performance standard is independently applicable to it.
 2811 If there is no such independently applicable standard, the source is a new discharger.

2812 3. Construction on a site at which an existing source is located results in a state permit
 2813 modification subject to 9VAC25-870-630 rather than a new source (or a new discharger)
 2814 if the construction does not create a new building, structure, facility, or installation meeting
 2815 the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or
 2816 adds to existing process or production equipment.

2817 4. Construction of a new source has commenced if the owner or operator has:

2818 a. Begun, or caused to begin as part of a continuous on-site construction program:

2819 (1) Any placement, assembly, or installation of facilities or equipment; or

2820 (2) Significant site preparation work including clearing, excavation or removal of
 2821 existing buildings, structures, or facilities which is necessary for the placement,
 2822 assembly, or installation of new source facilities or equipment; or

2823 b. Entered into a binding contractual obligation for the purchase of facilities or
 2824 equipment which are intended to be used in its operation within a reasonable time.
 2825 Options to purchase or contracts which can be terminated or modified without

2826 substantial loss, and contracts for feasibility engineering, and design studies do not
2827 constitute a contractual obligation under the paragraph.

2828 B. Effect of compliance with new source performance standards. The provisions of this
2829 subsection do not apply to existing sources which modify their pollution control facilities or
2830 construct new pollution control facilities and achieve performance standards, but which are neither
2831 new sources or new dischargers or otherwise do not meet the requirements of this subdivision.

2832 1. Except as provided in subdivision 2 of this subsection, any new discharger, the
2833 construction of which commenced after October 18, 1972, or new source which meets the
2834 applicable promulgated new source performance standards before the commencement of
2835 discharge, may not be subject to any more stringent new source performance standards
2836 or to any more stringent technology-based standards under § 301(b)(2) of the CWA for
2837 the soonest ending of the following periods:

2838 a. Ten years from the date that construction is completed;

2839 b. Ten years from the date the source begins to discharge process or other
2840 nonconstruction related wastewater; or

2841 c. The period of depreciation or amortization of the facility for the purposes of § 167 or
2842 § 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169,
2843 respectively).

2844 2. The protection from more stringent standards of performance afforded by subdivision 1
2845 of this subsection does not apply to:

2846 a. Additional or more stringent state permit conditions that are not technology based;
2847 for example, conditions based on water quality standards, or toxic effluent standards
2848 or prohibitions under the Act and § 307(a) of the CWA; or

2849 b. Additional state permit conditions controlling toxic pollutants or hazardous
2850 substances that are not controlled by new source performance standards. This
2851 includes state permit conditions controlling pollutants other than those identified as
2852 toxic pollutants or hazardous substances when control of these pollutants has been
2853 specifically identified as the method to control the toxic pollutants or hazardous
2854 substances.

2855 3. When a separate VPDES or state permit issued to a source with a protection period
2856 under subdivision 1 of this subsection will expire on or after the expiration of the protection
2857 period, that permit shall require the owner or operator of the source to comply with the
2858 requirements of § 301 of the CWA and any other then applicable requirements of the CWA
2859 and the Act immediately upon the expiration of the protection period. No additional period
2860 for achieving compliance with these requirements may be allowed except when necessary
2861 to achieve compliance with requirements promulgated less than three years before the
2862 expiration of the protection period.

2863 4. The owner or operator of a new source, a new discharger which commenced discharge
2864 after August 13, 1979, or a recommencing discharger shall install and have in operating
2865 condition, and shall start-up all pollution control equipment required to meet the conditions
2866 of its state permits before beginning to discharge. Within the shortest feasible time (not to
2867 exceed 90 days), the owner or operator must meet all state permit conditions. The
2868 requirements of this paragraph do not apply if the owner or operator is issued a state
2869 permit containing a compliance schedule under 9VAC25-870-490 A 2.

2870 5. After the effective date of new source performance standards, it shall be unlawful for
2871 any owner or operator of any new source to operate the source in violation of those
2872 standards applicable to the source.

2873 9VAC25-870-430. Conditions applicable to all state permits.

2874 The following conditions apply to all state permits. Additional conditions applicable to state
2875 permits are in 9VAC25-870-440. All conditions applicable to state permits shall be incorporated
2876 into the state permits either expressly or by reference. If incorporated by reference, a specific
2877 citation to this regulation must be given in the state permit.

2878 A. The state permittee shall comply with all conditions of the state permit. Any state permit
2879 noncompliance constitutes a violation of the Act and the CWA, except that noncompliance with
2880 certain provisions of the state permit may constitute a violation of the Act but not the CWA. State
2881 permit noncompliance is grounds for enforcement action; for state permit termination, revocation
2882 and reissuance, or modification; or denial of a state permit renewal application.

2883 The state permittee shall comply with effluent standards or prohibitions established under §
2884 307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these
2885 standards or prohibitions, even if the state permit has not yet been modified to incorporate the
2886 requirement.

2887 B. If the state permittee wishes to continue an activity regulated by the state permit after the
2888 expiration date of the state permit, the state permittee must apply for and obtain a new state
2889 permit.

2890 C. It shall not be a defense for a state permittee in an enforcement action that it would have
2891 been necessary to halt or reduce the permitted activity in order to maintain compliance with the
2892 conditions of the state permit.

2893 D. The state permittee shall take all reasonable steps to minimize or prevent any discharge in
2894 violation of the state permit that has a reasonable likelihood of adversely affecting human health
2895 or the environment.

2896 E. The state permittee shall at all times properly operate and maintain all facilities and systems
2897 of treatment and control (and related appurtenances) that are installed or used by the state
2898 permittee to achieve compliance with the conditions of the state permit. Proper operation and
2899 maintenance also includes adequate laboratory controls and appropriate quality assurance
2900 procedures. This provision requires the operation of back-up or auxiliary facilities or similar
2901 systems that are installed by a state permittee only when the operation is necessary to achieve
2902 compliance with the conditions of the state permit.

2903 F. State permits may be modified, revoked and reissued, or terminated for cause. The filing
2904 of a request by the state permittee for a state permit modification, revocation and reissuance, or
2905 termination, or a notification of planned changes or anticipated noncompliance does not stay any
2906 state permit condition.

2907 G. State permits do not convey any property rights of any sort, or any exclusive privilege.

2908 H. The state permittee shall furnish to the department, within a reasonable time, any
2909 information that the ~~board~~ department may request to determine whether cause exists for
2910 modifying, revoking and reissuing, or terminating the state permit or to determine compliance with
2911 the state permit. The ~~board~~ department may require the state permittee to furnish, upon request,
2912 such plans, specifications, and other pertinent information as may be necessary to determine the
2913 effect of the wastes from his discharge on the quality of state waters, or such other information
2914 as may be necessary to accomplish the purposes of the Act. The state permittee shall also furnish
2915 to the department upon request, copies of records required to be kept by the state permit.

2916 I. The state permittee shall allow the director, ~~as the board's department designee~~, or an
2917 authorized representative (including an authorized contractor acting as a representative of the
2918 administrator), upon presentation of credentials and other documents as may be required by law,
2919 to:

- 2920 1. Enter upon the state permittee's premises where a regulated facility or activity is located
 2921 or conducted, or where records must be kept under the conditions of the state permit;
 2922 2. Have access to and copy, at reasonable times, any records that must be kept under the
 2923 conditions of the state permit;
 2924 3. Inspect at reasonable times any facilities, equipment (including monitoring and control
 2925 equipment), practices, or operations regulated or required under the state permit; and
 2926 4. Sample or monitor at reasonable times, for the purposes of assuring state permit
 2927 compliance or as otherwise authorized by the CWA and the Act, any substances or
 2928 parameters at any location.

2929 J. Monitoring and records.

- 2930 1. Samples and measurements taken for the purpose of monitoring shall be representative
 2931 of the monitored activity.
 2932 2. The state permittee shall retain records of all monitoring information, including all
 2933 calibration and maintenance records and all original strip chart recordings for continuous
 2934 monitoring instrumentation, copies of all reports required by the state permit, and records
 2935 of all data used to complete the application for the state permit, for a period of at least
 2936 three years from the date of the sample, measurement, report or application. This period
 2937 of retention shall be extended automatically during the course of any unresolved litigation
 2938 regarding the regulated activity or regarding control standards applicable to the state
 2939 permittee, or as requested by the ~~board~~ department.
 2940 3. Records of monitoring information shall include:
 2941 a. The date, exact place, and time of sampling or measurements;
 2942 b. The individual or individuals who performed the sampling or measurements;
 2943 c. The date or dates analyses were performed;
 2944 d. The individual or individuals who performed the analyses;
 2945 e. The analytical techniques or methods used; and
 2946 f. The results of such analyses.
 2947 4. Monitoring results must be conducted according to test procedures approved under 40
 2948 CFR Part 136 or alternative EPA approved methods, unless other test procedures have
 2949 been specified in the state permit. Analyses performed according to test procedures
 2950 approved under 40 CFR Part 136 shall be performed by an environmental laboratory
 2951 certified under regulations adopted by the Department of General Services (1VAC30-45
 2952 or 1VAC30-46).

2953 K. All applications, reports, or information submitted to the VSMP authority and department
 2954 shall be signed and certified as required by 9VAC25-870-370.

2955 L. Reporting requirements.

- 2956 1. The state permittee shall give notice to the department as soon as possible of any
 2957 planned physical alterations or additions to the permitted facility. Notice is required only
 2958 when:
 2959 a. The alteration or addition to a permitted facility may meet one of the criteria for
 2960 determining whether a facility is a new source in 9VAC25-870-420 A; or
 2961 b. The alteration or addition could significantly change the nature or increase the
 2962 quantity of pollutants discharged. This notification applies to pollutants that are not
 2963 subject to effluent limitations in the state permit.

- 2964 2. The state permittee shall give advance notice to the department of any planned changes
2965 in the permitted facility or activity that may result in noncompliance with state permit
2966 requirements.
- 2967 3. State permits are not transferable to any person except in accordance with 9VAC25-
2968 870-620.
- 2969 4. Monitoring results shall be reported at the intervals specified in the state permit.
- 2970 a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or
2971 forms provided or specified by the department. As of the start date in Table 1 of
2972 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision
2973 shall be submitted electronically by the permittee to the department in compliance with
2974 this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
2975 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
2976 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
2977 not intended to undo existing requirements for electronic reporting. Prior to this date,
2978 and independent of Part XI of 9VAC25-31, permittees may be required to report
2979 electronically if specified by a particular permit.
- 2980 b. If the state permittee monitors any pollutant specifically addressed by the state
2981 permit more frequently than required by the state permit using test procedures
2982 approved under 40 CFR Part 136 or as otherwise specified in the state permit, the
2983 results of this monitoring shall be included in the calculation and reporting of the data
2984 submitted in the DMR or reporting form specified by the department.
- 2985 c. Calculations for all limitations that require averaging of measurements shall utilize
2986 an arithmetic mean unless otherwise specified in the permit.
- 2987 5. Reports of compliance or noncompliance with, or any progress reports on, interim and
2988 final requirements contained in any compliance schedule of the state permit shall be
2989 submitted no later than 14 days following each schedule date.
- 2990 6. If any unusual or extraordinary discharge including a bypass or upset should occur from
2991 a facility and such discharge enters or could be expected to enter state waters, the state
2992 permittee shall promptly notify, in no case later than 24 hours, the department by
2993 telephone after the discovery of such discharge. This notification shall provide all available
2994 details of the incident, including any adverse effects on aquatic life and the known number
2995 of fish killed. The state permittee shall reduce the report to writing and shall submit it to
2996 the department within five days of discovery of the discharge in accordance with
2997 subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are
2998 not limited to any discharge resulting from:
- 2999 a. Unusual spillage of materials resulting directly or indirectly from processing
3000 operations;
- 3001 b. Breakdown of processing or accessory equipment;
- 3002 c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as
3003 sewer lines or wastewater pump stations); and
- 3004 d. Flooding or other acts of nature.
- 3005 7. Twenty-four hour and five-day reporting.
- 3006 a. The state permittee shall report any noncompliance that may endanger health or
3007 the environment. Any information shall be provided orally within 24 hours from the time
3008 the state permittee becomes aware of the circumstances. A report in the format
3009 required by the department shall also be provided within five days of the time the state
3010 permittee becomes aware of the circumstances. The five-day report shall contain a
3011 description of the noncompliance and its cause; the period of noncompliance,

- 3012 including exact dates and times, and if the noncompliance has not been corrected, the
3013 anticipated time it is expected to continue; and steps taken or planned to reduce,
3014 eliminate, and prevent reoccurrence of the noncompliance.
- 3015 (1) For noncompliance events related to combined sewer overflows, sanitary sewer
3016 overflows, or bypass events, these reports must include the data described in
3017 subdivision 7 a of this subsection (with the exception of time of discovery), as well as
3018 the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass
3019 events); type of sewer overflow structure (e.g., manhole, combine sewer overflow
3020 outfall); discharge volumes untreated by the treatment works treating domestic
3021 sewage; types of human health and environmental impacts of the sewer overflow
3022 event; and whether the noncompliance was related to wet weather.
- 3023 (2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined
3024 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
3025 with this subdivision 7 shall be submitted electronically by the permittee to the
3026 department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all
3027 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
3028 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
3029 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
3030 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
3031 permittees may be required to electronically submit reports related to combined sewer
3032 overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a
3033 particular permit.
- 3034 (3) The director may also require permittees to electronically submit reports not related
3035 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
3036 subdivision 7.
- 3037 b. The following shall be reported within 24 hours under this subdivision:
- 3038 (1) Any unanticipated bypass that exceeds any effluent limitation in the state permit.
3039 (2) Any upset that exceeds any effluent limitation in the state permit.
3040 (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in
3041 the state permit to be reported within 24 hours.
- 3042 c. The ~~board~~ department may waive the five-day report on a case-by-case basis for
3043 reports under this subdivision if the oral report has been received within 24 hours.
- 3044 8. The state permittee shall report all instances of noncompliance not reported under
3045 subdivisions 4, 5, 6, and 7 of this subsection, in the format required by the department, at
3046 the time the next monitoring reports are submitted. The reports shall contain the
3047 information listed in subdivision 7 of this subsection.
- 3048 a. For noncompliance events related to combined sewer overflows, sanitary sewer
3049 overflows, or bypass events, these reports shall contain the information described in
3050 subdivision 7 a of this subsection and the applicable required data in Appendix A to
3051 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.
- 3052 b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined
3053 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
3054 with this subdivision 8 shall be submitted electronically by the permittee to the
3055 department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all
3056 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
3057 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
3058 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
3059 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,

3060 permittees may be required to electronically submit reports related to combined sewer
 3061 overflows, sanitary sewer overflows, or bypass events under this section by a
 3062 particular permit.

3063 c. The director may also require permittees to electronically submit reports not related
 3064 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
 3065 section.

3066 9. Where the state permittee becomes aware that it failed to submit any relevant facts in
 3067 a permit application, or submitted incorrect information in a state permit application or in
 3068 any report to the department, it shall promptly submit such facts or information.

3069 10. The owner, operator, or the duly authorized representative of an VPDES-regulated
 3070 entity is required to electronically submit the required information, as specified in Appendix
 3071 A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

3072 M. Bypass.

3073 1. The state permittee may allow any bypass to occur that does not cause effluent
 3074 limitations to be exceeded, but only if it also is for essential maintenance to assure efficient
 3075 operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this
 3076 subsection.

3077 2. Notice.

3078 a. Anticipated bypass. If the state permittee knows in advance of the need for a
 3079 bypass, it shall submit prior notice, if possible at least 10 days before the date of the
 3080 bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in
 3081 compliance with this subdivision shall be submitted electronically by the permittee to
 3082 the department in compliance with this subsection and 40 CFR Part 3 (including, in all
 3083 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
 3084 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
 3085 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
 3086 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
 3087 permittees may be required to report electronically if specified by a particular permit.

3088 b. Unanticipated bypass. The state permittee shall submit notice of an unanticipated
 3089 bypass as required in subdivision L 7 of this section. As of the start date in Table 1 of
 3090 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be
 3091 submitted electronically by the permittee to the department in compliance with this
 3092 subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
 3093 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
 3094 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
 3095 not intended to undo existing requirements for electronic reporting. Prior to this date,
 3096 and independent of Part XI of 9VAC25-31, permittees may be required to report
 3097 electronically if specified by a particular permit.

3098 3. Prohibition of bypass.

3099 a. Bypass is prohibited, and the ~~board~~ department may take enforcement action
 3100 against a state permittee for bypass, unless:

3101 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property
 3102 damage;

3103 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary
 3104 treatment facilities, retention of untreated wastes, or maintenance during normal
 3105 periods of equipment downtime. This condition is not satisfied if adequate back-up
 3106 equipment should have been installed in the exercise of reasonable engineering

3107 judgment to prevent a bypass that occurred during normal periods of equipment
3108 downtime or preventive maintenance; and

3109 (3) The state permittee submitted notices as required under subdivision 2 of this
3110 subsection.

3111 b. The ~~board~~ department may approve an anticipated bypass, after considering its
3112 adverse effects, if the ~~board~~ department determines that it will meet the three
3113 conditions listed in subdivision 3 a of this subsection.

3114 N. Upset.

3115 1. An upset constitutes an affirmative defense to an action brought for noncompliance with
3116 such technology based state permit effluent limitations if the requirements of subdivision
3117 2 of this subsection are met. No determination made during administrative review of claims
3118 that noncompliance was caused by upset, and before an action for noncompliance, is final
3119 administrative action subject to judicial review.

3120 2. A state permittee who wishes to establish the affirmative defense of upset shall
3121 demonstrate, through properly signed, contemporaneous operating logs, or other relevant
3122 evidence that:

3123 a. An upset occurred and that the state permittee can identify the cause or causes of
3124 the upset;

3125 b. The permitted facility was at the time being properly operated;

3126 c. The state permittee submitted notice of the upset as required in subdivision L 7 b
3127 (2) of this section (24-hour notice); and

3128 d. The state permittee complied with any remedial measures required under
3129 subsection D of this section.

3130 3. In any enforcement proceeding the state permittee seeking to establish the occurrence
3131 of an upset has the burden of proof.

3132 **9VAC25-870-440. Additional conditions applicable to municipal separate storm sewer state**
3133 **permits.**

3134 In addition to those conditions set forth in 9VAC25-870-430, the operator of a large or medium
3135 municipal separate storm sewer system or a municipal separate storm sewer that has been
3136 designated by the ~~board~~ department under 9VAC25-870-380 A 1 e must submit an annual report
3137 by a date specified in the state permit for such system. As of the start date in Table 1 of 9VAC25-
3138 31-1020, all reports submitted in compliance with this section shall be submitted electronically by
3139 the owner, operator, or the duly authorized representative of the MS4 to the department in
3140 compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart
3141 D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge
3142 Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo
3143 existing requirements for electronic reporting. Prior to this date, and independent of Part XI of
3144 9VAC25-31, the owner, operator, or the duly authorized representative of the small MS4 may be
3145 required to report electronically if specified by a particular permit. The report shall include:

3146 1. The status of implementing the components of the stormwater management program
3147 that are established as state permit conditions;

3148 2. Proposed changes to the stormwater management programs that are established as
3149 state permit conditions. Such proposed changes shall be consistent with 9VAC25-870-
3150 380 C 2 d;

3151 3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported
3152 in the state permit application;

- 3153 4. A summary of data, including monitoring data, that is accumulated throughout the
3154 reporting year;
- 3155 5. Annual expenditures and budget for year following each annual report;
- 3156 6. A summary describing the number and nature of enforcement actions, inspections, and
3157 public education programs; and
- 3158 7. Identification of water quality improvements or degradation.

3159 **9VAC25-870-450. Establishing state permit conditions.**

3160 A. In addition to conditions required in all state permits, the ~~board~~ department shall establish
3161 conditions, as required on a case-by-case basis, to provide for and assure compliance with all
3162 applicable requirements of the Stormwater Management Act, the State Water Control Law, the
3163 CWA, and attendant regulations. These shall include conditions under 9VAC25-870-480 (duration
3164 of state permits), 9VAC25-870-490 (schedules of compliance), 9VAC25-870-460 (monitoring),
3165 electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et seq.) of the
3166 Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

3167 B. 1. An applicable requirement is a state statutory or regulatory requirement which takes
3168 effect prior to final administrative disposition of a state permit. An applicable requirement is also
3169 any requirement that takes effect prior to the modification or revocation and reissuance of a state
3170 permit to the extent allowed in Part X of this chapter.

3171 2. New or reissued state permits, and to the extent allowed under Part X of this chapter
3172 modified or revoked and reissued state permits, shall incorporate each of the applicable
3173 requirements referenced in 9VAC25-870-460 and 9VAC25-870-470.

3174 C. All state permit conditions shall be incorporated either expressly or by reference. If
3175 incorporated by reference, a specific citation to the applicable regulations or requirements must
3176 be given in the state permit.

3177 **9VAC25-870-460. Establishing limitations, standards, and other state permit conditions.**

3178 In addition to the conditions established under 9VAC25-870-450 A, each state permit shall
3179 include conditions meeting the following requirements when applicable.

3180 A. 1. Technology-based effluent limitations and standards based on effluent limitations and
3181 standards promulgated under § 301 of the CWA, on new source performance standards
3182 promulgated under § 306 of CWA, on case-by-case effluent limitations determined under §
3183 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these
3184 technology-based limitations and standards are subject to the provisions of 9VAC25-870-420 B
3185 (protection period).

3186 2. The ~~board~~ department may authorize a discharger subject to technology-based effluent
3187 limitations guidelines and standards in a state permit to forego sampling of a pollutant
3188 found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and
3189 other technical factors that the pollutant is not present in the discharge or is present only
3190 at background levels from intake water and without any increase in the pollutant due to
3191 activities of the discharger. This waiver is good only for the term of the state permit and is
3192 not available during the term of the first state permit issued to a discharger. Any request
3193 for this waiver must be submitted when applying for a reissued state permit or modification
3194 of a reissued state permit. The request must demonstrate through sampling or other
3195 technical information, including information generated during an earlier state permit term,
3196 that the pollutant is not present in the discharge or is present only at background levels
3197 from intake water and without any increase in the pollutant due to activities of the
3198 discharger. Any grant of the monitoring waiver must be included in the state permit as an
3199 express state permit condition and the reasons supporting the grant must be documented
3200 in the state permit's fact sheet or statement of basis. This provision does not supersede

3201 certification processes and requirements already established in existing effluent limitations
3202 guidelines and standards.

3203 B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the
3204 CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance
3205 specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for
3206 a toxic pollutant and that standard or prohibition is more stringent than any limitation on the
3207 pollutant in the state permit, the ~~board~~ department shall institute proceedings under this chapter
3208 to modify or revoke and reissue the state permit to conform to the toxic effluent standard or
3209 prohibition.

3210 C. Water quality standards and state requirements. Any requirements in addition to or more
3211 stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306,
3212 307, 318 and 405 of the CWA necessary to:

3213 1. Achieve water quality standards established under the State Water Control Law and §
3214 303 of the CWA, including state narrative criteria for water quality.

3215 a. Limitations must control all pollutants or pollutant parameters (either conventional,
3216 nonconventional, or toxic pollutants) which the ~~board~~ department determines are or
3217 may be discharged at a level that will cause, have the reasonable potential to cause,
3218 or contribute to an excursion above any Virginia water quality standard, including
3219 Virginia narrative criteria for water quality.

3220 b. When determining whether a discharge causes, has the reasonable potential to
3221 cause, or contributes to an in-stream excursion above a narrative or numeric criteria
3222 within a Virginia water quality standard, the ~~board~~ department shall use procedures
3223 that account for existing controls on point and nonpoint sources of pollution, the
3224 variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the
3225 species to toxicity testing (when evaluating whole effluent toxicity), and where
3226 appropriate, the dilution of the effluent in the receiving water.

3227 c. When the ~~board~~ department determines, using the procedures in subdivision 1 b of
3228 this subsection, that a discharge causes, has the reasonable potential to cause, or
3229 contributes to an in-stream excursion above the allowable ambient concentration of a
3230 Virginia numeric criteria within a Virginia water quality standard for an individual
3231 pollutant, the state permit must contain effluent limits for that pollutant.

3232 d. Except as provided in this subdivision, when the ~~board~~ department determines,
3233 using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other
3234 information, that a discharge causes, has the reasonable potential to cause, or
3235 contributes to an in-stream excursion above a narrative criterion within an applicable
3236 Virginia water quality standard, the state permit must contain effluent limits for whole
3237 effluent toxicity. Limits on whole effluent toxicity are not necessary where the ~~board~~
3238 department demonstrates in the fact sheet or statement of basis of the state permit,
3239 using the procedures in subdivision 1 b of this subsection, that chemical-specific limits
3240 for the effluent are sufficient to attain and maintain applicable numeric and narrative
3241 Virginia water quality standards.

3242 e. Where Virginia has not established a water quality criterion for a specific chemical
3243 pollutant that is present in an effluent at a concentration that causes, has the
3244 reasonable potential to cause, or contributes to an excursion above a narrative
3245 criterion within an applicable Virginia water quality standard, the ~~board~~ department
3246 must establish effluent limits using one or more of the following options:

3247 (1) Establish effluent limits using a calculated numeric water quality criterion for the
3248 pollutant which the ~~board~~ department demonstrates will attain and maintain applicable
3249 narrative water quality criteria and will fully protect the designated use. Such a criterion

- 3250 may be derived using a proposed Virginia criterion, or an explicit policy or regulation
 3251 interpreting Virginia's narrative water quality criterion, supplemented with other
 3252 relevant information which may include: EPA's Water Quality Standards Handbook,
 3253 August 1994, risk assessment data, exposure data, information about the pollutant
 3254 from the Food and Drug Administration, and current EPA criteria documents;
- 3255 (2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria,
 3256 published under § 307(a) of the CWA, supplemented where necessary by other
 3257 relevant information; or
- 3258 (3) Establish effluent limitations on an indicator parameter for the pollutant of concern,
 3259 provided:
- 3260 (a) The state permit identifies which pollutants are intended to be controlled by the use
 3261 of the effluent limitation;
- 3262 (b) The fact sheet required by 9VAC25-870-520 sets forth the basis for the limit,
 3263 including a finding that compliance with the effluent limit on the indicator parameter
 3264 will result in controls on the pollutant of concern which are sufficient to attain and
 3265 maintain applicable water quality standards;
- 3266 (c) The state permit requires all effluent and ambient monitoring necessary to show
 3267 that during the term of the state permit the limit on the indicator parameter continues
 3268 to attain and maintain applicable water quality standards; and
- 3269 (d) The state permit contains a reopener clause allowing the ~~board~~ department
 3270 to modify or revoke and reissue the state permit if the limits on the indicator parameter
 3271 no longer attain and maintain applicable water quality standards.
- 3272 f. When developing water quality-based effluent limits under this subdivision the ~~board~~
 3273 department shall ensure that:
- 3274 (1) The level of water quality to be achieved by limits on point sources established
 3275 under this subsection is derived from, and complies with all applicable water quality
 3276 standards; and
- 3277 (2) Effluent limits developed to protect a narrative water quality criterion, a numeric
 3278 water quality criterion, or both, are consistent with the assumptions and requirements
 3279 of any available wasteload allocation for the discharge prepared by Virginia and
 3280 approved by EPA pursuant to 40 CFR 130.7;
- 3281 2. Attain or maintain a specified water quality through water quality related effluent limits
 3282 established under the State Water Control Law and § 302 of the CWA;
- 3283 3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under
 3284 the State Water Control Law and § 401 of the CWA;
- 3285 4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when
 3286 the discharge affects a state other than Virginia;
- 3287 5. Incorporate any more stringent limitations, treatment standards, or schedule of
 3288 compliance requirements established under the Act or regulations in accordance with §
 3289 301(b)(1)(C) of the CWA;
- 3290 6. Ensure consistency with the requirements of a Water Quality Management plan
 3291 established by the State Water Control Board pursuant to 9VAC25-720 and approved by
 3292 EPA under § 208(b) of the CWA;
- 3293 7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges;
 3294 or
- 3295 8. Incorporate alternative effluent limitations or standards where warranted by
 3296 fundamentally different factors, under 40 CFR Part 125, Subpart D.

3297 D. Technology-based controls for toxic pollutants. Limitations established under subsections
 3298 A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this
 3299 subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An
 3300 explanation of the development of these limitations shall be included in the fact sheet.

3301 1. Limitations must control all toxic pollutants that the ~~board~~ department determines
 3302 (based on information reported in a permit application or in a notification required by the
 3303 state permit or on other information) are or may be discharged at a level greater than the
 3304 level that can be achieved by the technology-based treatment requirements appropriate
 3305 to the state permittee; or

3306 2. The requirement that the limitations control the pollutants meeting the criteria of
 3307 subdivision 1 of this subsection will be satisfied by:

3308 a. Limitations on those pollutants; or

3309 b. Limitations on other pollutants that, in the judgment of the ~~board~~ department, will
 3310 provide treatment of the pollutants under subdivision 1 of this subsection to the levels
 3311 required by the Stormwater Management Act, the State Water Control Law, and 40
 3312 CFR Part 125, Subpart A.

3313 E. A notification level that exceeds the notification level of 9VAC25-870-440 A 1 a, b, or c,
 3314 upon a petition from the state permittee or on the ~~board's~~ department's initiative. This new
 3315 notification level may not exceed the level which can be achieved by the technology-based
 3316 treatment requirements appropriate to the state permittee.

3317 F. Twenty-four-hour reporting. Pollutants for which the state permittee must report violations
 3318 of maximum daily discharge limitations under 9VAC25-870-430 L 7 b (3) (24-hour reporting) shall
 3319 be listed in the state permit. This list shall include any toxic pollutant or hazardous substance, or
 3320 any pollutant specifically identified as the method to control a toxic pollutant or hazardous
 3321 substance.

3322 G. Durations for state permits, as set forth in 9VAC25-870-480.

3323 H. Monitoring requirements.

3324 1. Requirements concerning the proper use, maintenance, and installation, when
 3325 appropriate, of monitoring equipment or methods (including biological monitoring methods
 3326 when appropriate);

3327 2. Required monitoring including type, intervals, and frequency sufficient to yield data that
 3328 are representative of the monitored activity including, when appropriate, continuous
 3329 monitoring;

3330 3. Applicable reporting requirements based upon the impact of the regulated activity and
 3331 as specified in 9VAC25-870-430, subdivisions 5 through 8 of this subsection, and Part XI
 3332 (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES)
 3333 Permit Regulation. Reporting shall be no less frequent than specified in the above
 3334 regulation;

3335 4. To assure compliance with state permit limitations, requirements to monitor:

3336 a. The mass (or other measurement specified in the state permit) for each pollutant
 3337 limited in the state permit;

3338 b. The volume of effluent discharged from each outfall;

3339 c. Other measurements as appropriate including pollutants; frequency, rate of
 3340 discharge, etc., for noncontinuous discharges; pollutants subject to notification
 3341 requirements; or as determined to be necessary on a case-by-case basis pursuant to
 3342 the Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the
 3343 CWA;

- 3344 d. According to test procedures approved under 40 CFR Part 136 for the analyses of
 3345 pollutants having approved methods under that part, or alternative EPA approved
 3346 methods, and according to a test procedure specified in the state permit for pollutants
 3347 with no approved methods; and
- 3348 e. With analyses performed according to test procedures approved under 40 CFR Part
 3349 136 being performed by an environmental laboratory certified under regulations
 3350 adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).
- 3351 5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report
 3352 monitoring results shall be established on a case-by-case basis with a frequency
 3353 dependent on the nature and effect of the discharge, but in no case less than once a year.
 3354 All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in
 3355 all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
 3356 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation;
- 3357 6. Requirements to report monitoring results for stormwater discharges associated with
 3358 industrial activity that are subject to an effluent limitation guideline shall be established on
 3359 a case-by-case basis with a frequency dependent on the nature and effect of the
 3360 discharge, but in no case less than once a year;
- 3361 7. Requirements to report monitoring results for stormwater discharges (other than those
 3362 addressed in subdivision 6 of this subsection) shall be established on a case-by-case
 3363 basis with a frequency dependent on the nature and effect of the discharge. At a minimum,
 3364 a state permit for such a discharge must require:
- 3365 a. The discharger to conduct an annual inspection of the facility site to identify areas
 3366 contributing to a stormwater discharge and evaluate whether measures to reduce
 3367 pollutant loading identified in a stormwater pollution prevention plan are adequate and
 3368 properly implemented in accordance with the terms of the state permit or whether
 3369 additional control measures are needed;
- 3370 b. The discharger to maintain for a period of three years a record summarizing the
 3371 results of the inspection and a certification that the facility is in compliance with the
 3372 plan and the state permit, and identifying any incidents of noncompliance;
- 3373 c. Such report and certification be signed in accordance with 9VAC25-870-370; and
- 3374 8. State permits which do not require the submittal of monitoring result reports at least
 3375 annually shall require that the state permittee report all instances of noncompliance not
 3376 reported under 9VAC25-870-430 L 1, 4, 5, 6, and 7 at least annually.
- 3377 I. Best management practices to control or abate the discharge of pollutants when:
- 3378 1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;
- 3379 2. Numeric effluent limitations are infeasible; or
- 3380 3. The practices are reasonably necessary to achieve effluent limitations and standards
 3381 or to carry out the purposes and intent of the Stormwater Management Act, the State
 3382 Water Control Law, and the CWA.
- 3383 J. Reissued state permits.
- 3384 1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA,
 3385 a state permit may not be renewed, reissued, or modified on the basis of effluent
 3386 guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of
 3387 such state permit, to contain effluent limitations that are less stringent than the comparable
 3388 effluent limitations in the previous state permit. In the case of effluent limitations
 3389 established on the basis of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a state permit
 3390 may not be renewed, reissued, or modified to contain effluent limitations that are less

3391 stringent than the comparable effluent limitations in the previous state permit except in
3392 compliance with § 303(d)(4) of the CWA.

3393 2. Exceptions. A state permit with respect to which subdivision 1 of this subsection applies
3394 may be renewed, reissued, or modified to contain a less stringent effluent limitation
3395 applicable to a pollutant, if:

3396 a. Material and substantial alterations or additions to the permitted facility occurred
3397 after permit issuance that justify the application of a less stringent effluent limitation;

3398 b. (1) Information is available that was not available at the time of state permit issuance
3399 (other than revised regulations, guidance, or test methods) and that would have
3400 justified the application of a less stringent effluent limitation at the time of state permit
3401 issuance; or

3402 (2) The ~~board~~ department determines that technical mistakes or mistaken
3403 interpretations of the Act were made in issuing the state permit under § 402(a)(1)(B)
3404 of the CWA;

3405 c. A less stringent effluent limitation is necessary because of events over which the
3406 state permittee has no control and for which there is no reasonably available remedy;

3407 d. The state permittee has received a state permit modification under the Stormwater
3408 Management Act, the State Water Control Law, and § 301(c), 301(g), 301(h), 301(i),
3409 301(k), 301(n), or 316(a) of the CWA; or

3410 e. The state permittee has installed the treatment facilities required to meet the effluent
3411 limitations in the previous state permit and has properly operated and maintained the
3412 facilities but has nevertheless been unable to achieve the previous effluent limitations,
3413 in which case the limitations in the reviewed, reissued, or modified state permit may
3414 reflect the level of pollutant control actually achieved (but shall not be less stringent
3415 than required by effluent guidelines in effect at the time of state permit renewal,
3416 reissuance, or modification).

3417 Subdivision 2 b of this subsection shall not apply to any revised waste load allocations
3418 or any alternative grounds for translating water quality standards into effluent
3419 limitations, except where the cumulative effect of such revised allocations results in a
3420 decrease in the amount of pollutants discharged into the concerned waters, and such
3421 revised allocations are not the result of a discharger eliminating or substantially
3422 reducing its discharge of pollutants due to complying with the requirements of the Act
3423 or the CWA or for reasons otherwise unrelated to water quality.

3424 3. In no event may a state permit with respect to which subdivision 2 of this subsection
3425 applies be renewed, reissued, or modified to contain an effluent limitation that is less
3426 stringent than required by effluent guidelines in effect at the time the state permit is
3427 renewed, reissued, or modified. In no event may such a state permit to discharge into
3428 waters be renewed, issued, or modified to contain a less stringent effluent limitation if the
3429 implementation of such limitation would result in a violation of a Virginia water quality
3430 standard applicable to such waters.

3431 K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure
3432 that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-870-
3433 570.

3434 L. Qualifying state, tribal, or local programs.

3435 1. For stormwater discharges associated with small construction activity identified in
3436 9VAC25-870-10, the ~~board~~ department may include state permit conditions that
3437 incorporate qualifying state, tribal, or local erosion and sediment control program
3438 requirements by reference. Where a qualifying state, tribal, or local program does not

3439 include one or more of the elements in this subdivision, then the ~~board~~ department must
 3440 include those elements as conditions in the state permit. A qualifying state, tribal, or local
 3441 erosion and sediment control program is one that includes:

- 3442 a. Requirements for construction site operators to implement appropriate erosion and
 3443 sediment control best management practices;
- 3444 b. Requirements for construction site operators to control waste such as discarded
 3445 building materials, concrete truck washout, chemicals, litter, and sanitary waste at the
 3446 construction site that may cause adverse impacts to water quality;
- 3447 c. Requirements for construction site operators to develop and implement a
 3448 stormwater pollution prevention plan. A stormwater pollution prevention plan includes
 3449 site descriptions; descriptions of appropriate control measures; copies of approved
 3450 state, tribal or local requirements; maintenance procedures; inspection procedures;
 3451 and identification of nonstormwater discharges; and
- 3452 d. Requirements to submit a site plan for review that incorporates consideration of
 3453 potential water quality impacts.

3454 2. For stormwater discharges from construction activity that does not meet the definition
 3455 of a small construction activity, the ~~board~~ department may include state permit conditions
 3456 that incorporate qualifying state, tribal, or local erosion and sediment control program
 3457 requirements by reference. A qualifying state, tribal or local erosion and sediment control
 3458 program is one that includes the elements listed in subdivision 1 of this subsection and
 3459 any additional requirements necessary to achieve the applicable technology-based
 3460 standards of "best available technology" and "best conventional technology" based on the
 3461 best professional judgment of the state permit writer.

3462 **9VAC25-870-480. Duration of state permits.**

- 3463 A. State permits shall be effective for a fixed term not to exceed five years.
- 3464 B. Except as provided in 9VAC25-870-330, the term of a state permit shall not be extended
 3465 by modification beyond the maximum duration specified in this section.
- 3466 C. The ~~board~~ department may issue any state permit for a duration that is less than the full
 3467 allowable term under this section.
- 3468 D. A state permit may be issued to expire on or after the statutory deadline set forth in §§
 3469 301(b)(2) (A), (C), and (E) of the CWA, if the state permit includes effluent limitations to meet the
 3470 requirements of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable
 3471 effluent limitations guidelines have been promulgated or approved.

3472 **9VAC25-870-490. Schedules of compliance.**

- 3473 A. The state permit may, when appropriate, specify a schedule of compliance leading to
 3474 compliance with the Act, the CWA and regulations.
 - 3475 1. Any schedules of compliance under this section shall require compliance as soon as
 3476 possible, but not later than the applicable statutory deadline under the CWA.
 - 3477 2. The first state permit issued to a new source or a new discharger shall contain a
 3478 schedule of compliance only when necessary to allow a reasonable opportunity to attain
 3479 compliance with requirements issued or revised after commencement of construction but
 3480 less than three years before commencement of the relevant discharge. For recommencing
 3481 dischargers, a schedule of compliance shall be available only when necessary to allow a
 3482 reasonable opportunity to attain compliance with requirements issued or revised less than
 3483 three years before recommencement of discharge.
 - 3484 3. Schedules of compliance may be established in state permits for existing sources that
 3485 are reissued or modified to contain new or more restrictive water quality-based effluent

3486 limitations. The schedule may allow a reasonable period of time, not to exceed the term
 3487 of the state permit, for the discharger to attain compliance with the water quality-based
 3488 limitations.

3489 4. Except as provided in subdivision B 1 b of this section, if a state permit establishes a
 3490 schedule of compliance that exceeds one year from the date of state permit issuance, the
 3491 schedule shall set forth interim requirements and the dates for their achievement.

3492 a. The time between interim dates shall not exceed one year.

3493 b. If the time necessary for completion of any interim requirement is more than one
 3494 year and is not readily divisible into stages for completion, the state permit shall specify
 3495 interim dates for the submission of reports of progress toward completion of the interim
 3496 requirements and indicate a projected completion date.

3497 5. The state permit shall be written to require that no later than 14 days following each
 3498 interim date and the final date of compliance, the state permittee shall notify the
 3499 department in writing of its compliance or noncompliance with the interim or final
 3500 requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

3501 B. A state permit applicant or state permittee may cease conducting regulated activities (by
 3502 termination of direct discharge for sources) rather than continuing to operate and meet state
 3503 permit requirements as follows:

3504 1. If the state permittee decides to cease conducting regulated activities at a given time
 3505 within the term of a state permit that has already been issued:

3506 a. The state permit may be modified to contain a new or additional schedule leading
 3507 to timely cessation of activities; or

3508 b. The state permittee shall cease conducting permitted activities before
 3509 noncompliance with any interim or final compliance schedule requirement already
 3510 specified in the state permit;

3511 2. If the decision to cease conducting regulated activities is made before issuance of a
 3512 state permit whose term will include the termination date, the state permit shall contain a
 3513 schedule leading to termination which will ensure timely compliance with applicable
 3514 requirements no later than the statutory deadline;

3515 3. If the state permittee is undecided whether to cease conducting regulated activities, the
 3516 board department may issue or modify a state permit to contain two schedules as follows:

3517 a. Both schedules shall contain an identical interim deadline requiring a final decision
 3518 on whether to cease conducting regulated activities no later than a date that ensures
 3519 sufficient time to comply with applicable requirements in a timely manner if the decision
 3520 is to continue conducting regulated activities;

3521 b. One schedule shall lead to timely compliance with applicable requirements no later
 3522 than the statutory deadline;

3523 c. The second schedule shall lead to cessation of regulated activities by a date that
 3524 will ensure timely compliance with applicable requirements no later than the statutory
 3525 deadline; and

3526 d. Each state permit containing two schedules shall include a requirement that after
 3527 the state permittee has made a final decision under subdivision 3 a of this subsection
 3528 it shall follow the schedule leading to compliance if the decision is to continue
 3529 conducting regulated activities, and follow the schedule leading to termination if the
 3530 decision is to cease conducting regulated activities; and

3531 4. The state permit applicant's or state permittee's decision to cease conducting regulated
 3532 activities shall be evidenced by a firm public commitment satisfactory to the ~~board~~
 3533 department, such as a resolution of the board of directors of a corporation.

3534 **9VAC25-870-500. Draft state permits.**

3535 A. Once an application for an individual state permit is complete, the ~~board~~ department shall
 3536 tentatively decide whether to prepare a draft individual state permit or to deny the application.

3537 B. If the ~~board~~ department tentatively decides to deny the individual state permit application,
 3538 the owner shall be advised of that decision and of the changes necessary to obtain approval. The
 3539 owner may withdraw the application prior to ~~board~~ department action. If the application is not
 3540 withdrawn or modified to obtain the tentative approval to issue, the ~~board~~ department shall provide
 3541 public notice and opportunity for a public hearing prior to ~~board~~ department action on the
 3542 application.

3543 C. If the ~~board~~ department tentatively decides to issue a general permit, a draft general permit
 3544 shall be prepared under subsection D of this section.

3545 D. If the ~~board~~ department decides to prepare a draft state permit, the draft state permit shall
 3546 contain the following information:

- 3547 1. All conditions under 9VAC25-870-430 and 9VAC25-870-450;
- 3548 2. All compliance schedules under 9VAC25-870-490;
- 3549 3. All monitoring requirements under 9VAC25-870-460; and
- 3550 4. Effluent limitations, standards, prohibitions and conditions under 9VAC25-870-430,
 3551 9VAC25-870-440, and 9VAC25-870-460, and all variances that are to be included.

3552 **9VAC25-870-520. Fact sheet.**

3553 A. A fact sheet shall be prepared for every draft individual state permit for a major facility or
 3554 activity, for every general permit, for every draft state permit that incorporates a variance or
 3555 requires an explanation under subsection B 8 of this section, and for every draft state permit that
 3556 the ~~board~~ department finds is the subject of wide-spread public interest or raises major issues.
 3557 The fact sheet shall briefly set forth the principal facts and the significant factual, legal,
 3558 methodological and policy questions considered in preparing the draft state permit. The ~~board~~
 3559 department shall send this fact sheet to the state permit applicant and, on request, to any other
 3560 person.

3561 B. The fact sheet shall include, when applicable:

- 3562 1. A brief description of the type of facility or activity that is the subject of the draft state
 3563 permit;
- 3564 2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are
 3565 being treated, stored, disposed of, injected, emitted, or discharged;
- 3566 3. A brief summary of the basis for the draft state permit conditions including references
 3567 to applicable statutory or regulatory provisions;
- 3568 4. Reasons why any requested variances or alternatives to required standards do or do
 3569 not appear justified;
- 3570 5. A description of the procedures for reaching a final decision on the draft state permit
 3571 including:
 - 3572 a. The beginning and ending dates of the comment period for the draft state permit
 3573 and the address where comments will be received;
 - 3574 b. Procedures for requesting a public hearing and the nature of that hearing; and
 - 3575 c. Any other procedures by which the public may participate in the final decision;

- 3576 6. Name, telephone number, and email address of a person to contact for additional
3577 information;
- 3578 7. Any calculations or other necessary explanation of the derivation of specific effluent
3579 limitations and conditions or standards for sewage sludge use or disposal, including a
3580 citation to the applicable effluent limitation guideline, performance standard, or standard
3581 for sewage sludge use or disposal and reasons why they are applicable or an explanation
3582 of how the alternate effluent limitations were developed;
- 3583 8. When the draft state permit contains any of the following conditions, an explanation of
3584 the reasons why such conditions are applicable:
- 3585 a. Limitations to control toxic pollutants;
 - 3586 b. Limitations on indicator pollutants;
 - 3587 c. Technology-based limitations set on a case-by-case basis;
 - 3588 d. Limitations to meet the criteria for state permit issuance under 9VAC25-870-310; or
 - 3589 e. Waivers from monitoring requirements granted under 9VAC25-870-460 A; and
- 3590 9. When appropriate, a sketch or detailed description of the location of the discharge or
3591 regulated activity described in the application.

3592 **9VAC25-870-530. Public notice of draft state permit actions and public comment period.**

3593 A. Scope.

- 3594 1. The ~~board~~ department shall give public notice that the following actions have occurred:
- 3595 a. A draft state permit has been prepared under 9VAC25-870-500 D;
 - 3596 b. A public hearing has been scheduled under 9VAC25-870-550; or
 - 3597 c. A new source determination has been made under 9VAC25-870-420.

3598 2. No public notice is required when a request for an individual state permit modification,
3599 revocation and reissuance, or termination is denied under 9VAC25-870-610 B. Written
3600 notice of that denial shall be given to the requester and to the state permittee. Public notice
3601 shall not be required for submission or approval of plans and specifications or conceptual
3602 engineering reports not required to be submitted as part of the application.

3603 3. Public notices may describe more than one draft state permit or draft state permit
3604 actions.

3605 B. Timing.

3606 1. Public notice of the preparation of a draft state permit required under subsection A of
3607 this section shall allow at least 30 days for public comment.

3608 2. Public notice of a public hearing shall be given at least 30 days before the hearing.
3609 (Public notice of the hearing may be given at the same time as public notice of the draft
3610 state permit and the two notices may be combined.)

3611 C. Methods. Public notice of activities described in subdivision A 1 of this section shall be
3612 given by the following methods:

3613 1. By mailing, either by electronic or postal delivery, a copy of a notice to the following
3614 persons (any person otherwise entitled to receive notice under this subdivision may waive
3615 his rights to receive notice for any classes and categories of permits):

3616 a. The state permit applicant (except for general permits when there is no state permit
3617 applicant);

3618 b. Any other agency that the ~~board~~ department knows has issued or is required to
3619 issue a VPDES permit;

- 3620 c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife
 3621 resources and over coastal zone management plans, the Advisory Council on Historic
 3622 Preservation, State Historic Preservation Officers, including any affected states (Indian
 3623 Tribes);
- 3624 d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or
 3625 § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife
 3626 Service and the National Marine Fisheries Service;
- 3627 e. Persons on a mailing list developed by:
- 3628 (1) Including those who request in writing to be on the list;
- 3629 (2) Soliciting persons for area lists from participants in past state permit proceedings
 3630 in that area; and
- 3631 (3) Notifying the public of the opportunity to be put on the mailing list through periodic
 3632 publication in the public press, and in such publications as EPA regional and state
 3633 funded newsletters, environmental bulletins, or state law journals. (The ~~board~~
 3634 department may update the mailing list from time to time by requesting written
 3635 indication of continued interest from those listed. The ~~board~~ department may delete
 3636 from the list the name of any person who fails to respond to such a request.);
- 3637 f. (1) Any unit of local government having jurisdiction over the area where the facility
 3638 is proposed to be located; and
- 3639 (2) Each state agency having any authority under state law with respect to the
 3640 construction or operation of such facility;
- 3641 2. By publication once a week for two successive weeks in a newspaper of general
 3642 circulation in the area affected by the discharge. The cost of public notice shall be paid by
 3643 the owner; and
- 3644 3. Any other method reasonably calculated to give actual notice of the action in question
 3645 to the persons potentially affected by it, including press releases or any other forum or
 3646 medium to elicit public participation.
- 3647 D. Contents.
- 3648 1. All public notices issued under this part shall contain the following minimum information:
- 3649 a. Name and address of the office processing the state permit action for which notice
 3650 is being given;
- 3651 b. Name and address of the state permittee or state permit applicant and, if different,
 3652 of the facility or activity regulated by the state permit, except in the case of draft general
 3653 permits;
- 3654 c. A brief description of the business conducted at the facility or activity described in
 3655 the individual state permit application or the draft state permit, for general permits
 3656 when there is no application;
- 3657 d. Name, address, telephone number, and email address of a person from whom
 3658 interested persons may obtain further information, including copies of the draft state
 3659 permit, statement of basis or fact sheet, and the application;
- 3660 e. A brief description of the procedures for submitting comments and the time and
 3661 place of any public hearing that will be held, including a statement of procedures to
 3662 request a public hearing (unless a hearing has already been scheduled) and other
 3663 procedures by which the public may participate in the final individual or general state
 3664 permit decision;
- 3665 f. For an individual state permit, a general description of the location of each existing
 3666 or proposed discharge point and the name of the receiving water; and

- 3667 g. Any additional information considered necessary or proper.
- 3668 2. In addition to the general public notice described in subdivision 1 of this subsection, the
- 3669 public notice of a public hearing under 9VAC25-870-550 shall contain the following
- 3670 information:
- 3671 a. Reference to the date of previous public notices relating to the draft state permit;
- 3672 b. Date, time, and place of the public hearing;
- 3673 c. A brief description of the nature and purpose of the public hearing, including the
- 3674 applicable rules and procedures; and
- 3675 d. A concise statement of the issues raised by the persons requesting the public
- 3676 hearing.
- 3677 E. In addition to the general public notice described in subdivision D 1 of this section, all
- 3678 persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by
- 3679 electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual state
- 3680 permit application (if any) and the draft state permit (if any).
- 3681 **9VAC25-870-540. Public comments and requests for public hearings.**
- 3682 During the public comment period provided under 9VAC25-870-530, any interested person
- 3683 may submit written comments on the draft state permit and may request a public hearing, if no
- 3684 public hearing has already been scheduled. A request for a public hearing shall be in writing and
- 3685 shall meet the requirements of ~~§ 62.1-44.15:02 B~~ of the Code of Virginia 9VAC25-870-550 and
- 3686 9VAC25-870-555. All comments shall be considered in making the final decision and shall be
- 3687 answered as provided in 9VAC25-870-560.
- 3688 **9VAC25-870-550. Public hearings.**
- 3689 A. 1. Procedures for public hearings and permits before the ~~board~~ department are those set
- 3690 forth in ~~§ 62.1-44.15:02~~ of the Code of Virginia 9VAC25-870-555.
- 3691 2. Public notice of the public hearing shall be given as specified in 9VAC25-870-530.
- 3692 3. Any public hearing convened pursuant to this section shall be held in the geographical
- 3693 area of the proposed discharge, or in another appropriate area. Related groups of
- 3694 individual state permit applications may be considered at any such public hearing.
- 3695 B. Any person may submit oral or written statements and data concerning the draft individual
- 3696 state permit. Reasonable limits may be set upon the time allowed for oral statements, and the
- 3697 submission of statements in writing may be required.
- 3698 C. A recording or written transcript of the hearing shall be made available to the public.
- 3699 **9VAC25-870-555. Criteria for requesting and granting a public hearing in a permit action.**
- 3700 A. During the public comment period on a permit action in those instances where a public
- 3701 hearing is not mandatory under state or federal law or regulation, interested persons may request
- 3702 a public hearing to contest the action or terms and conditions of the permit.
- 3703 B. Requests for a public hearing shall contain the following information:
- 3704 1. The name and postal mailing or email address of the requester;
- 3705 2. The names and addresses of all persons for whom the requester is acting as a
- 3706 representative;
- 3707 3. The reason for the request for a public hearing;
- 3708 4. A brief, informal statement setting forth the factual nature and extent of the interest of
- 3709 the requester or of the persons for whom the requester is acting as representative in the
- 3710 application or tentative determination, including an explanation of how and to what extent
- 3711 such interest would be directly and adversely affected by the issuance, denial,
- 3712 modification, or revocation of the permit in question; and

3713 5. Where possible, specific references to the terms and the conditions of the permit in
 3714 question, together with suggested revisions and alterations to those terms and conditions
 3715 that the requester considers are needed to conform the permit to the intent and provisions
 3716 of the basic laws of the State Water Control Board.

3717 C. Upon completion of the public comment period on a permit action, the director shall review
 3718 all timely requests for public hearing filed during the comment period on the permit action, and
 3719 within 30 calendar days following the expiration of the time period for the submission of requests
 3720 shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director
 3721 finds the following:

3722 1. That there is a significant public interest in the issuance, denial, modification or
 3723 revocation of the permit in question as evidenced by receipt of a minimum of 25 individual
 3724 requests for a public hearing;

3725 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,
 3726 modification, or revocation of the permit in question; and

3727 3. That the action requested by the interested party is not on its face inconsistent with, or
 3728 in violation of, the basic laws of the State Water Control Board for a water permit action,
 3729 federal law, or any regulation promulgated thereunder.

3730 D. The director shall notify by email or mail at his last known address: (i) each requester and
 3731 (ii) the applicant or permittee of the decision to grant or deny a public hearing.

3732 E. If the request for a public hearing is granted, the director shall:

3733 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the
 3734 notice of the decision to grant the public hearing; and

3735 2. Cause, or require the applicant to publish, notice of a public hearing to be published
 3736 once, in a newspaper of general circulation in the city or county where the facility or
 3737 operation that is the subject of the permit or permit application is located at least 30 days
 3738 before the hearing date.

3739 F. The public comment period shall remain open for 15 days after the close of the public
 3740 hearing if required by §62.1-44.15:01 of the Code of Virginia.

3741 G. The director may, at his discretion, convene a public hearing in a permit action.

3742 **9VAC25-870-556. Controversial Permits.**

3743 Before rendering a final decision on a controversial permit, the department shall publish a
 3744 summary of public comments received during the applicable public comment period and public
 3745 hearing. After such publication, the department shall publish responses to the public comment
 3746 summary and hold a public hearing to provide an opportunity for individuals who previously
 3747 commented, either at a public hearing or in writing during the applicable public comment period,
 3748 to respond to the department's public comment summary and response. No new information will
 3749 be accepted at that time. In making its decision, the department shall consider: (i) the verbal and
 3750 written comments received during the comment period and the public hearing made part of the
 3751 record, (ii) any commentary of the board, and (iii) the agency files.

3752 **9VAC25-870-557. Controversial permits reporting.**

3753 At each regular meeting of the board, the department shall provide an overview and update
 3754 regarding any controversial permits pending before the department that are relevant. Immediately
 3755 after such presentation by the department, the board shall have an opportunity to respond to the
 3756 department's presentation and provide commentary regarding such pending permits.

3757 **9VAC25-870-560. Response to comments.**

3758 A. At the time that a final individual or general state permit is issued, the board department
 3759 shall issue a response to comments. This response shall:

3760 1. Specify which provisions, if any, of the draft individual or general state permit have been
 3761 changed in the final individual or general state permit decision, and the reasons for the
 3762 change; and

3763 2. Briefly describe and respond to all significant comments on the draft state permit raised
 3764 during the public comment period, or during any public hearing.

3765 B. The response to comments shall be available to the public.

3766 **9VAC25-870-570. Conditions requested by the Corps of Engineers and other government**
 3767 **agencies.**

3768 A. If during the comment period for a draft state permit, the district engineer advises the
 3769 department in writing that anchorage and navigation of any of the waters of the United States
 3770 would be substantially impaired by the granting of an individual or general state permit, the
 3771 individual or general state permit shall be denied and the individual state permit applicant so
 3772 notified. If the district engineer advises the department that imposing specified conditions upon
 3773 the individual or general state permit is necessary to avoid any substantial impairment of
 3774 anchorage or navigation, then the ~~board~~ department shall include the specified conditions in the
 3775 individual or general state permit. Review or appeal of denial of an individual or general state
 3776 permit or of conditions specified by the district engineer shall be made through the applicable
 3777 procedures of the Corps of Engineers, and may not be made through the procedures provided in
 3778 this part. If the conditions are stayed by a court of competent jurisdiction or by applicable
 3779 procedures of the Corps of Engineers, those conditions shall be considered stayed in the
 3780 individual or general state permit for the duration of that stay.

3781 B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine
 3782 Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public
 3783 health advises the department in writing that the imposition of specified conditions upon the
 3784 individual or general state permit is necessary to avoid substantial impairment of fish, shellfish, or
 3785 wildlife resources, the ~~board~~ department may include the specified conditions in the individual or
 3786 general state permit to the extent they are determined necessary to carry out the provisions of
 3787 this regulation, the Act and of the CWA.

3788 C. In appropriate cases the ~~board~~ department may consult with one or more of the agencies
 3789 referred to in this section before issuing a draft state permit and may reflect their views in the
 3790 statement of basis, the fact sheet, or the draft state permit.

3791 **9VAC25-870-580. Decision on variances.**

3792 A. The ~~board~~ department may grant or deny requests for variances requested pursuant to
 3793 9VAC25-870-360 G 4, subject to EPA objection. Decisions on these variances shall be made
 3794 according to the criteria of 40 CFR Part 125, Subpart H.

3795 B. The ~~board~~ department may deny, or forward to the regional administrator with a written
 3796 concurrence, or submit to EPA without recommendation a completed request for:

3797 1. A variance based on the economic capability of the individual state permit applicant
 3798 submitted pursuant to 9VAC25-870-360 G 2; or

3799 2. A variance based on water quality related effluent limitations submitted pursuant to
 3800 9VAC25-870-360 G 3.

3801 C. If the EPA approves the variance, the ~~board~~ department may prepare a draft individual
 3802 state permit incorporating the variance. Any public notice of a draft individual state permit for
 3803 which a variance or modification has been approved or denied shall identify the applicable
 3804 procedures for appealing that decision.

3805 D. The ~~board~~ department may deny or forward to the administrator with a written concurrence
 3806 a completed request for:

3807 1. A variance based on the presence of fundamentally different factors from those on
3808 which an effluent limitations guideline was based, made according to the criteria and
3809 standards of 40 CFR Part 125, Subpart D; or

3810 2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-
3811 870-360 G 2.

3812 E. If the administrator approves the variance, the ~~board~~ department may prepare a draft
3813 individual state permit incorporating the variance. Any public notice of a draft individual state
3814 permit for which a variance or modification has been approved or denied shall identify the
3815 applicable procedures for appealing that decision.

3816 **9VAC25-870-590. Appeals of variances.**

3817 When the ~~board~~ department issues an individual state permit on which EPA has made a
3818 variance decision, separate appeals of the individual state permit and of the EPA variance
3819 decision are possible.

3820 **9VAC25-870-610. Modification, revocation and reissuance, or termination of state permits.**

3821 A. State permits may be modified, revoked and reissued, or terminated either at the request
3822 of any interested person (including the state permittee) or upon the ~~board's~~ department's initiative.
3823 When the department receives any information (for example, inspects the facility, receives
3824 information submitted by the state permittee as required in the state permit, receives a request
3825 for modification or revocation and reissuance, or conducts a review of the state permit file) it may
3826 determine whether one or more of the causes listed in this section for modification or revocation
3827 and reissuance, or both, exist. However, state permits may only be modified, revoked and
3828 reissued, or terminated for the reasons specified in 9VAC25-870-630 or 9VAC25-870-650. All
3829 requests shall be in writing and shall contain facts or reasons supporting the request. If cause
3830 does not exist under these sections, the ~~board~~ department shall not modify, revoke and reissue
3831 or terminate the state permit. If a state permit modification satisfies the criteria for minor
3832 modifications, the state permit may be modified without a draft state permit or public review.
3833 Otherwise, a draft state permit must be prepared and other procedures in Part IX (9VAC25-870-
3834 500 et seq.) followed.

3835 B. If the ~~board~~ department decides the request is not justified, it shall send the requester a
3836 brief written response giving a reason for the decision. Denials of requests for modification,
3837 revocation and reissuance, or termination are not subject to public notice, comment, or public
3838 hearings.

3839 C. 1. If the ~~board~~ department tentatively decides to modify or revoke and reissue a state
3840 permit, it shall prepare a draft state permit incorporating the proposed changes. The ~~board~~
3841 department may request additional information and, in the case of a modified state permit, may
3842 require the submission of an updated application. In the case of revoked and reissued state
3843 permits, the ~~board~~ department shall require the submission of a new application.

3844 2. In a state permit modification under this section, only those conditions to be modified
3845 shall be reopened when a new draft state permit is prepared. All other aspects of the
3846 existing state permit shall remain in effect for the duration of the unmodified state permit.
3847 When a state permit is revoked and reissued under this section, the entire state permit is
3848 reopened just as if the state permit had expired and was being reissued and the state
3849 permit is reissued for a new term. During any revocation and reissuance proceeding the
3850 state permittee shall comply with all conditions of the existing state permit until a new final
3851 state permit is reissued.

3852 3. Minor modifications as defined in 9VAC25-870-640 are not subject to the requirements
3853 of this section.

3854 D. If the ~~board~~ department tentatively decides to terminate a state permit under 9VAC25-870-
 3855 650, where the state permittee objects, it shall do so in accordance with the Administrative
 3856 Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

3857 **9VAC25-870-620. Transfer of state permits.**

3858 A. Except as provided in subsection B of this section, a state permit may be transferred by the
 3859 state permittee to a new owner or operator only if the state permit has been modified or revoked
 3860 and reissued, or a minor modification made, to identify the new state permittee and incorporate
 3861 such other requirements as may be necessary under the Virginia Stormwater Management Act
 3862 and the CWA.

3863 B. Automatic transfers. As an alternative to transfers under subsection A of this section, any
 3864 state permit may be automatically transferred to a new state permittee if:

3865 1. The current state permittee notifies the department at least 30 days in advance of the
 3866 proposed transfer date in subdivision 2 of this subsection;

3867 2. The notice includes a written agreement between the existing and new state permittees
 3868 containing a specific date for transfer of state permit responsibility, coverage, and liability
 3869 between them; and

3870 3. The ~~board~~ department does not notify the existing state permittee and the proposed
 3871 new state permittee of its intent to modify or revoke and reissue the state permit. A
 3872 modification under this subdivision may also be a minor modification. If this notice is not
 3873 received, the transfer is effective on the date specified in the agreement mentioned in
 3874 subdivision 2 of this subsection.

3875 **9VAC25-870-630. Modification or revocation and reissuance of state permits.**

3876 A. Causes for modification. The following are causes for modification but not revocation and
 3877 reissuance of state permits except when the state permittee requests or agrees.

3878 1. There are material and substantial alterations or additions to the permitted facility or
 3879 activity that occurred after state permit issuance that justify the application of state permit
 3880 conditions that are different or absent in the existing state permit.

3881 2. The department has received new information. State permits may be modified during
 3882 their terms for this cause only if the information was not available at the time of state permit
 3883 issuance (other than revised regulations, guidance, or test methods) and would have
 3884 justified the application of different state permit conditions at the time of issuance. For
 3885 general permits this cause includes any information indicating that cumulative effects on
 3886 the environment are unacceptable. For new source or new discharger state permits this
 3887 cause shall include any significant information derived from effluent testing required on
 3888 the state permit application after issuance of the state permit.

3889 3. The standards or regulations on which the state permit was based have been changed
 3890 by promulgation of amended standards or regulations or by judicial decision after the state
 3891 permit was issued. State permits may be modified during their terms for this cause only
 3892 as follows:

3893 a. For promulgation of amended standards or regulations, when:

3894 (1) The state permit condition requested to be modified was based on a promulgated
 3895 effluent limitation guideline, EPA approved or promulgated water quality standards;

3896 (2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent
 3897 limitation guideline on which the state permit condition was based, or has approved a
 3898 state action with regard to a water quality standard on which the state permit condition
 3899 was based; and

- 3900 (3) A state permittee requests modification in accordance with this chapter within 90
 3901 days after Federal Register notice of the action on which the request is based;
- 3902 b. For judicial decisions, a court of competent jurisdiction has remanded and stayed
 3903 EPA promulgated regulations or effluent limitation guidelines, if the remand and stay
 3904 concern that portion of the regulations or guidelines on which the state permit condition
 3905 was based and a request is filed by the state permittee in accordance with this chapter
 3906 within 90 days of judicial remand; or
- 3907 c. For changes based upon modified state certifications of state permits.
- 3908 4. The ~~board~~ department determines good cause exists for modification of a compliance
 3909 schedule, such as an act of God, strike, flood, or materials shortage or other events over
 3910 which the state permittee has little or no control and for which there is no reasonably
 3911 available remedy. However, in no case may a compliance schedule be modified to extend
 3912 beyond an applicable CWA statutory deadline.
- 3913 5. When the state permittee has filed a request for a variance pursuant to 9VAC25-870-
 3914 360 G within the time specified in this chapter.
- 3915 6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or
 3916 prohibition.
- 3917 7. When required by the reopener conditions in a state permit that are established under
 3918 9VAC25-870-460 B.
- 3919 8. Upon failure to notify another state whose waters may be affected by a discharge.
- 3920 9. When the level of discharge of any pollutant that is not limited in the state permit
 3921 exceeds the level that can be achieved by the technology-based treatment requirements
 3922 appropriate to the state permittee.
- 3923 10. To establish a notification level as provided in 9VAC25-870-460 E.
- 3924 11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations
 3925 of law made in determining state permit conditions.
- 3926 12. When the discharger has installed the treatment technology considered by the state
 3927 permit writer in setting effluent limitations imposed under the Act and § 402(a)(1) of the
 3928 CWA and has properly operated and maintained the facilities but nevertheless has been
 3929 unable to achieve those effluent limitations. In this case, the limitations in the modified
 3930 state permit may reflect the level of pollutant control actually achieved (but shall not be
 3931 less stringent than required by a subsequently promulgated effluent limitations guideline).
- 3932 13. For a small MS4, to include an effluent limitation requiring implementation of a
 3933 minimum control measure or measures as specified in 9VAC25-870-400 D 2 when:
- 3934 a. The state permit does not include such measures based upon the determination
 3935 that another entity was responsible for implementation of the requirements; and
- 3936 b. The other entity fails to implement measures that satisfy the requirements.
- 3937 B. Causes for modification or revocation and reissuance. The following are causes to modify
 3938 or, alternatively, revoke and reissue a state permit:
- 3939 1. Cause exists for termination under 9VAC25-870-650, and the ~~board~~ department
 3940 determines that modification or revocation and reissuance is appropriate; or
- 3941 2. The department has received notification of a proposed transfer of the state permit. A
 3942 state permit also may be modified to reflect a transfer after the effective date of an
 3943 automatic transfer but will not be revoked and reissued after the effective date of the
 3944 transfer except upon the request of the new state permittee.

3945 9VAC25-870-640. Minor modifications of individual state permits.

3946 Upon the consent of the state permittee, the ~~board~~ department may modify an individual state
 3947 permit to make the corrections or allowances for changes in the permitted activity listed in this
 3948 section, without following the procedures of Part IX of this chapter. Any individual state permit
 3949 modification not processed as a minor modification under this section must be made for cause
 3950 and with draft state permit and public notice. Minor modifications may only:

- 3951 1. Correct typographical errors;
- 3952 2. Require more frequent monitoring or reporting by the state permittee;
- 3953 3. Change an interim compliance date in a schedule of compliance, provided the new date
 3954 is not more than 120 days after the date specified in the existing individual state permit
 3955 and does not interfere with attainment of the final compliance date requirement;
- 3956 4. Allow for a change in ownership or operational control of a facility where the ~~board~~
 3957 department determines that no other change in the individual state permit is necessary,
 3958 provided that a written agreement containing a specific date for transfer of individual state
 3959 permit responsibility, coverage, and liability between the current and new individual state
 3960 permittees has been submitted to the department;
- 3961 5. a. Change the construction schedule for a discharger which is a new source. No such
 3962 change shall affect a discharger's obligation to have all pollution control equipment
 3963 installed and in operation prior to discharge.
- 3964 b. Delete a point source outfall when the discharge from that outfall is terminated and
 3965 does not result in discharge of pollutants from other outfalls except in accordance with
 3966 state permit limits; or
- 3967 6. Require electronic reporting requirements (to replace paper reporting requirements)
 3968 including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of the
 3969 Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

3970 9VAC25-870-650. Termination of state permits.

3971 A. The following are causes for terminating a state permit during its term, or for denying an
 3972 individual state permit, or coverage under a general permit renewal application, after notice and
 3973 opportunity for a hearing by the ~~board~~ department.

- 3974 1. The state permittee has violated any regulation or order of the board or department,
 3975 any order of the VSMP authority, any provision of the Virginia Stormwater Management
 3976 Act or this chapter, or any order of a court, where such violation results in the unreasonable
 3977 degradation of properties, water quality, stream channels, and other natural resources, or
 3978 the violation is representative of a pattern of serious or repeated violations that in the
 3979 opinion of the ~~board~~ department, demonstrates the state permittee's disregard for or
 3980 inability to comply with applicable laws, regulations, state permit conditions, orders, rules,
 3981 or requirements;
- 3982 2. Noncompliance by the state permittee with any condition of the state permit;
- 3983 3. The state permittee's failure to disclose fully all relevant material facts, or the state
 3984 permittee's misrepresentation of any relevant material facts in applying for a state permit,
 3985 or in any other report or document required under the Act or this chapter;
- 3986 4. A determination that the permitted activity endangers human health or the environment
 3987 and can only be regulated to acceptable levels by state permit modification or termination;
- 3988 5. A change in any condition that requires either a temporary or permanent reduction or
 3989 elimination of any discharge controlled by the state permit;
- 3990 6. The activity for which the state permit was issued causes unreasonable degradation of
 3991 properties, water quality, stream channels, and other natural resources; or

3992 7. There exists a material change in the basis on which the state permit was issued that
 3993 requires either a temporary or a permanent reduction or elimination of any discharge or
 3994 land-disturbing activity controlled by the state permit necessary to prevent unreasonable
 3995 degradation of properties, water quality, stream channels, and other natural resources.

3996 B. The board department shall follow the applicable procedures in this chapter in terminating
 3997 any state permit under this section, except that if the entire discharge is permanently terminated
 3998 by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application
 3999 or disposal into a well), the board department may terminate the state permit by notice to the state
 4000 permittee. Termination by notice shall be effective 30 days after notice is sent, unless the state
 4001 permittee objects within that time. If the state permittee objects during that period, the board
 4002 department shall follow the applicable procedures for termination under 9VAC25-870-610 D.
 4003 Expedited state permit termination procedures are not available to state permittees that are
 4004 subject to pending state or federal enforcement actions including citizen suits brought under state
 4005 or federal law. If requesting expedited state permit termination procedures, a state permittee must
 4006 certify that it is not subject to any pending state or federal enforcement actions including citizen
 4007 suits brought under state or federal law.

4008 C. Permittees that wish to terminate their state permit must submit a notice of termination
 4009 (NOT) to the department. If requesting expedited permit termination procedures, a permittee must
 4010 certify in the NOT that it is not subject to any pending state or federal enforcement actions
 4011 including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-
 4012 31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically
 4013 by the permittee to the department in compliance with this subsection and 40 CFR Part 3
 4014 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-
 4015 950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
 4016 Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior
 4017 to this date, and independent of Part XI of 9VAC25-31, the permittee may be required to report
 4018 electronically if specified by a particular permit.

4019 **9VAC25-870-660. Enforcement.**

4020 A. The board department may enforce the provisions of this chapter by:

- 4021 1. Issuing directives in accordance with the Act;
- 4022 2. Issuing special orders in accordance with the Act;
- 4023 3. Issuing emergency special orders in accordance with the Act;
- 4024 4. Seeking injunction, mandamus or other appropriate remedy as authorized by the Act;
- 4025 5. Seeking civil penalties under the Act; or
- 4026 6. Seeking remedies under the Act, the CWA or under other laws including the common
 4027 law.

4028 B. The board department encourages citizen participation in all its activities, including
 4029 enforcement. In particular:

- 4030 1. The board department will investigate citizen complaints and provide written response
 4031 to all signed, written complaints from citizens concerning matters within the board's
 4032 department's purview;
- 4033 2. The board department will not oppose intervention in any civil enforcement action when
 4034 such intervention is authorized by statute or Supreme Court rule; and
- 4035 3. At least 30 days prior to the final settlement of any civil enforcement action or the
 4036 issuance of any consent special order, the board department will publish public notice of
 4037 such settlement or order in a newspaper of general circulation in the county, city or town
 4038 in which the discharge is located, and in The Virginia Register of Regulations. This notice

4039 will identify the owner, specify the enforcement action to be taken and specify where a
 4040 copy of the settlement or order can be obtained. A consent special order is a special order
 4041 issued without a public hearing and with the written consent of the affected owner. For the
 4042 purpose of this chapter, an emergency special order is not a consent special order. The
 4043 ~~board~~ department shall consider all comments received during the comment period before
 4044 taking final action.

4045 C. When a state permit is amended solely to reflect a new owner, and the previous owner had
 4046 been issued a consent special order that, at the time of state permit amendment was still in full
 4047 force and effect, a consent special order issued to the new owner does not have to go to public
 4048 notice provided that:

- 4049 1. The state permit amendment does not have to go to public notice; and
- 4050 2. The terms of the new consent order are the same as issued to the previous owner.

4051 D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by
 4052 agreement ~~at a board meeting~~ without further notice when a hearing has been scheduled to issue
 4053 a special order to the affected owner, whether or not the hearing is actually held.

4054 **9VAC25-870-670. Delegation of authority. (Repealed.)**

4055 ~~The director, or his designee, may perform any act of the board provided under the Act and~~
 4056 ~~this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

4057 **9VAC25-870-680. Transition.**

4058 Upon the effective date of this chapter the following will occur:

- 4059 1. All applications received after the effective date of this chapter will be processed in
 4060 accordance with these procedures.
- 4061 2. State permits issued by the Soil and Water Conservation Board allowing the discharge
 4062 of stormwater into surface waters from municipal separate storm sewer systems or land-
 4063 disturbing activities that have not expired or been revoked or terminated before or on the
 4064 program transfer date to the ~~board~~ department shall continue to remain in effect until their
 4065 specified expiration dates.

4066 **9VAC25-870-700. Purpose.**

4067 Sections 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia authorize the establishment
 4068 of a statewide fee schedule, including administrative charges for state agencies, for stormwater
 4069 management for land-disturbing activities and for municipal separate storm sewer systems. This
 4070 part establishes the fee assessment and the collection and distribution systems for those fees.
 4071 The fees shall be established for individual permits or coverage under the General Permit for
 4072 Discharges of Stormwater from Construction Activities (state permits for stormwater management
 4073 for land-disturbing activities) to cover all costs associated with the implementation of a VSMP by
 4074 a VSMP authority that has been approved by the ~~board and by the department~~. Such fee attributes
 4075 include the costs associated with plan review, registration statement review, permit issuance,
 4076 state-coverage verification, inspections, reporting, database management, and compliance
 4077 activities associated with the land-disturbing activities as well as for program oversight costs. Fees
 4078 shall also be established for state permit maintenance, modification, and transfer.

4079 Fees collected pursuant to this part shall be in addition to any general fund appropriations
 4080 made to the department or other supporting revenue from a VSMP; however, the fees shall be
 4081 set at a level sufficient for the department and the VSMP authority to fully carry out their
 4082 responsibilities under the Act, this chapter, local ordinances, or standards and specifications
 4083 where applicable.

4084 When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and
 4085 shall have the authority to reduce or increase such fees, and to consolidate such fees with other

4086 program-related charges, but in no case shall such fee changes affect the amount established in
 4087 9VAC25-870-820 as available to the department for program oversight responsibilities pursuant
 4088 to § 62.1-44.15:28 A 5 a of the Code of Virginia. Accordingly, should a VSMP authority
 4089 demonstrate to the ~~board~~ department its ability to fully and successfully implement a VSMP
 4090 without a full implementation of the fees set out in this part, the ~~board~~ department may authorize
 4091 the administrative establishment of a lower fee for that program provided that such reduction shall
 4092 not reduce the amount of fees due to the department for its program oversight and shall not affect
 4093 the fee schedules set forth herein.

4094 A VSMP authority may establish greater fees than those base fees specified by this part
 4095 should it be demonstrated to the ~~board~~ department that such greater fees are necessary to
 4096 properly administer the VSMP. Any fee increases established by the VSMP authority beyond
 4097 those base fees established in this part shall not be subject to the fee distribution formula set out
 4098 in 9VAC25-870-780. Nothing in this part shall prohibit a locality from establishing other local fees
 4099 authorized by the Code of Virginia related to stormwater management within their jurisdictions.

4100 A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities
 4101 under the Act, this chapter, ordinances, or annual standards and specifications.

4102 As part of its program oversight, the department shall periodically assess the revenue
 4103 generated by both the VSMP authorities and the department to ensure that the fees have been
 4104 appropriately set and the fees may be adjusted through periodic regulatory actions should
 4105 significant deviations become apparent.

4106 **9VAC25-870-740. Exemptions.**

4107 A. No state permit application fees will be assessed to:

- 4108 1. State permittees who request minor modifications to state permits as defined in
 4109 9VAC25-870-10 or other minor amendments at the discretion of the VSMP authority.
- 4110 2. State permittees whose state permits are modified or amended at the request of the
 4111 VSMP authority or department ~~by the board~~. This does not include errors in the registration
 4112 statement identified by the VSMP authority, or department, ~~or board~~ or errors related to
 4113 the acreage of the site.

4114 B. State permit modifications at the request of the state permittee resulting in changes to
 4115 stormwater management plans that require additional review by the VSMP authority shall not be
 4116 exempt pursuant to this section and shall be subject to fees specified under 9VAC25-870-825.

4117 **9VAC25-870-780. Deposit and use of fees.**

4118 A. All fees collected by the department ~~or board~~ pursuant to this chapter shall be deposited
 4119 into the Virginia Stormwater Management Fund and shall be used and accounted for as specified
 4120 in § 62.1-44.15:29 of the Code of Virginia. Fees collected by the department ~~or board~~ shall be
 4121 exempt from statewide indirect costs charged and collected by the Department of Accounts.

4122 B. All fees collected by a VSMP authority pursuant to this chapter shall be subject to
 4123 accounting review and shall be used solely to carry out the VSMP authority's responsibilities
 4124 pursuant to the Act, Part II and Part III A of this chapter, local ordinances, or annual standards
 4125 and specifications.

4126 Pursuant to subdivision A 5 a of § 62.1-44.15:28 of the Code of Virginia, whenever the ~~board~~
 4127 department has authorized the administration of a VSMP by a VSMP authority, 28% of the total
 4128 revenue generated by the statewide stormwater management fees collected in accordance with
 4129 9VAC25-870-820 shall be remitted on a schedule determined by the department to the State
 4130 Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected
 4131 electronically. If the VSMP authority waives or reduces any fee due in accordance with 9VAC25-
 4132 870-820, the VSMP authority shall remit the 28% portion that would be due to the Virginia
 4133 Stormwater Management Fund if such fee were charged in full. Any fee increases established by

4134 the VSMP authority beyond the base fees established in this part shall not be subject to the fee
4135 distribution formula.

4136 **9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for**
4137 **Discharges of Stormwater from Construction Activities.**

4138 The following fees apply, until June 30, 2014, to coverage under the General Permit for
4139 Discharges of Stormwater from Construction Activities issued by the department prior to a VSMP
4140 authority being approved by the ~~board~~ department in the area where the applicable land-
4141 disturbing activity is located, or where the department has issued an individual permit or coverage
4142 under the General Permit for Discharges of Stormwater from Construction Activities for a state or
4143 federal agency.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (Fee valid until July 1, 2014)	\$200
Individual Permit for Discharges of Stormwater from Construction Activities	\$15,000

4144 The following total fees to be paid by an applicant apply to (i) any operator seeking coverage
4145 under a July 1, 2014, General Permit for Discharges of Stormwater from Construction Activities
4146 or (ii) on or after July 1, 2014, to any operator seeking coverage under a General Permit for
4147 Discharges of Stormwater from Construction Activities, a state or federal agency that does not file
4148 annual standards and specifications, or an individual permit issued by the ~~board~~ department. On
4149 and after approval by the ~~board~~ department of a VSMP authority for coverage under the General
4150 Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the total
4151 fee to be paid by an applicant set out in this part shall be due at the time that a stormwater
4152 management plan or an initial stormwater management plan is submitted for review in accordance
4153 with 9VAC25-870-108. The remaining total fee balance to be paid by an applicant shall be due
4154 prior to the issuance of coverage under the General Permit for Discharges of Stormwater from
4155 Construction Activities.

4156 When a site or sites are purchased for development within a previously permitted common
4157 plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by
4158 applicant" column) in accordance with the disturbed acreage of their site or sites according to the
4159 following table.

Fee type	Total fee to be paid by applicant (includes both VSMP authority and department portions where applicable)	Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid*)
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Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)	\$209	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$290	\$81
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,700	\$756
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,400	\$952
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500	\$1,260
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-	\$6,100	\$1,708

disturbance acreage equal to or greater than 50 acres and less than 100 acres)		
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688
Individual Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,000	\$15,000
* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.		

4160 The following fees apply, on or after July 1, 2014, to coverage under the General Permit for
 4161 Discharges of Stormwater from Construction Activities issued by the ~~board~~ department for a state
 4162 or federal agency that has annual standards and specifications approved by the ~~board~~
 4163 department.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450

4164 **9VAC25-870-825. Fees for the modification or transfer of individual permits or of**
 4165 **registration statements for the General Permit for Discharges of Stormwater from**
 4166 **Construction Activities.**

4167 The following fees apply to modification or transfer of individual permits or of registration
 4168 statements for the General Permit for Discharges of Stormwater from Construction Activities
 4169 issued by the ~~board~~ department. If the state permit modifications result in changes to stormwater
 4170 management plans that require additional review by the VSMP authority, such reviews shall be
 4171 subject to the fees set out in this section. The fee assessed shall be based on the total disturbed
 4172 acreage of the site. In addition to the state permit modification fee, modifications resulting in an
 4173 increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and
 4174 the state permit fee that would have applied for the total disturbed acreage in 9VAC25-870-820.
 4175 No modification or transfer fee shall be required until such ~~board~~ department-approved programs
 4176 exist. These fees shall only be effective when assessed by a VSMP authority, including the
 4177 department when acting in that capacity, that has been approved by the ~~board~~ department. No
 4178 modification fee shall be required for the General Permit for Discharges of Stormwater from
 4179 Construction Activities for a state or federal agency that is administering a project in accordance
 4180 with approved annual standards and specifications but shall apply to all other state or federal
 4181 agency projects.

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$20
General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)	\$0
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$700
Individual Permit for Discharges of Stormwater from Construction Activities	\$5,000

4182 9VAC25-870-830. State permit maintenance fees.

4183 The following annual permit maintenance fees apply to each state permit identified below,
4184 including expired state permits that have been administratively continued. With respect to the
4185 General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply
4186 until the state permit coverage is terminated, and shall only be effective when assessed by a
4187 VSMP authority including the department when acting in that capacity that has been approved by
4188 the ~~board~~ department. No maintenance fee shall be required for a General Permit for Discharges
4189 of Stormwater from Construction Activities until such ~~board~~ department approved programs exist.
4190 No maintenance fee shall be required for the General Permit for Discharges of Stormwater from
4191 Construction Activities for a state or federal agency that is administering a project in accordance
4192 with approved annual standards and specifications but shall apply to all other state or federal
4193 agency projects. All regulated MS4s who are issued joint coverage under an individual permit or
4194 general permit registration shall each pay the appropriate fees set out below:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$8,800
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Municipal Stormwater / MS4 Individual (Small)	\$6,000
Municipal Stormwater / MS4 General Permit (Small)	\$3,000
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$50
General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority)	\$50
General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)	\$0
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)	\$400
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$500
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	\$1,400
Individual Permit for Discharges from Construction Activities	\$3,000



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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25 - 870
VAC Chapter title(s)	Virginia Stormwater Management Program Regulation
Action title	Final Exempt CH 870 Changes in Response to 2022 Legislative Changes
Final agency action date	June 22, 2022
Date this document prepared	May 13, 2022

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action amends the Virginia Stormwater Management Program Regulation (9VAC25-870) to incorporate changes resulting from Chapter 356 (Senate Bill 657), Chapter 32 (House Bill 1224), and Chapter 160 (House Bill 184) of the 2022 Acts of Assembly.

SB657 limits the authority of the State Water Control Board to the issuance of regulations; transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality; and provides procedures for public comment on pending controversial permits. Changes to 9VAC25-870 included changing designations from "board" to "department" where appropriate; a change in the definition of "Board"; the addition of a definition for "controversial permit"; the addition of language establishing "permit rationale"; the addition of language establishing "criteria for requesting and granting a public hearing in a permit action"; the addition of language related to "controversial permits" and "controversial permits reporting"; and the correction of Code references where necessary to implement the new statutory requirements.

HB1224 directs the State Water Control Board to update its regulations providing for the certification and use of a proprietary best management practice (BMP) if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and its having met or exceeded all of such program's established test protocol requirements. Changes to the regulation included removal of two subdivisions from 9VAC25-870-65.

HB184 authorizes a locality that administers a Virginia Stormwater Management Program (VSMP) or a Virginia Erosion and Stormwater Management Program (VESMP) to administer such program of a regional industrial facility authority of which the locality is a member. This administration is to be conducted in accordance with an agreement entered into by relevant localities and the existing VSMP or VESMP for the property. Changes to the regulation included adding a subsection to 9VAC25-870-102 articulating this authority.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Section 2.2-4006 A.4.a of the Code of Virginia allows the Board to adopt this regulatory amendment to conform to changes in Virginia statutory law. This regulatory action will incorporate statutory changes in Chapter 356, Chapter 32, and Chapter 160 of the 2022 Acts of Assembly into the Virginia Stormwater Management Program Regulation (9VAC25-870).

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Water Control Board approved this amendment to 9VAC25-870 on June 22, 2022, as a final regulation, and affirmed that the Board will receive, consider and respond to requests by any interested person at any time with respect to reconsideration or revision.

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 32

An Act to amend and reenact § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to stormwater management; proprietary best management practices; emergency.

[H 1224]

Approved April 1, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;
2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:

- a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

- b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

- c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where

coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity for which it has approved annual standards and specifications. After establishment, such fees may be modified in the future through regulatory actions.

d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP authority portion of the statewide permit fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.

f. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

6. Establish statewide standards for stormwater management from land-disturbing activities of one acre or greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a comprehensive approach to addressing stormwater management and erosion and sediment control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations;

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

8. Notwithstanding the provisions of subdivision 5, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

9. Provide for the *certification and* use of a proprietary best management practice only if another state, regional, or national ~~certification~~ program has verified ~~and certified~~ its nutrient or sediment removal effectiveness *and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;*

10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer administration of the VSMP to the Department;

14. Establish a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits;

15. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution;

16. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

17. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

B. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;
2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;
3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;
4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;
5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;
6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;
7. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;
9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:
 - a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia

Stormwater Management Fund, with the balance going to the VESMP authority;

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities for small construction activity involving a single-family detached residential structure with a site or area, within or outside a common plan of development or sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale;

d. When any fees are collected pursuant to this section by credit cards, business transaction costs associated with processing such payments may be additionally assessed;

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither a registration statement nor payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for the *certification and use of a proprietary best management practice only if another state, regional, or national certification program has verified and certified its nutrient or sediment removal effectiveness and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;*

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

18. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution;

19. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

20. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

2. That the Department of Environmental Quality shall prioritize review of any proprietary best management practice (BMP) that was on the Virginia Stormwater BMP Clearinghouse prior to December 31, 2021, and that submits documentation that another state, regional, or national program has verified its nutrient or sediment removal effectiveness and that it met or exceeded all of such program's established test protocol requirements.

3. That an emergency exists and this act is in force from its passage.

VIRGINIA ACTS OF ASSEMBLY – 2022 SESSION

CHAPTER 160

An Act to amend and reenact § 62.1-44.15:27, as it is currently effective and as it may become effective, of the Code of Virginia, relating to administration of Virginia Stormwater Management Programs; regional industrial facility authorities.

[H 184]

Approved April 7, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:27, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:27. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Establishment of Virginia Stormwater Management Programs.

A. Any locality that operates a regulated MS4 or that notifies the Department of its decision to participate in the establishment of a VSMP shall be required to adopt a VSMP for land-disturbing activities consistent with the provisions of this article according to a schedule set by the Department. Such schedule shall require implementation no later than July 1, 2014. Thereafter, the Department shall provide an annual schedule by which localities can submit applications to implement a VSMP. Localities subject to this subsection are authorized to coordinate plan review and inspections with other entities in accordance with subsection H.

The Department shall operate a VSMP on behalf of any locality that does not operate a regulated MS4 and that does not notify the Department, according to a schedule set by the Department, of its decision to participate in the establishment of a VSMP. A locality that decides not to establish a VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). A locality that is subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) also shall adopt requirements set forth in this article and attendant regulations as required to regulate Chesapeake Bay Preservation Act land-disturbing activities in accordance with § 62.1-44.15:28. To comply with the water quantity technical criteria set forth in this article and attendant regulations, a rural Tidewater locality may adopt a tiered approach to water quantity management for Chesapeake Bay Preservation Act land-disturbing activities pursuant to § 62.1-44.15:27.2.

Notwithstanding any other provision of this subsection, any county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect, on a schedule set by the Department, to defer the implementation of the county's VSMP until no later than January 1, 2015. During this deferral period, when such county thus lacks the legal authority to operate a VSMP, the Department shall operate a VSMP on behalf of the county and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls. Any such county electing to defer the establishment of its VSMP shall still comply with the requirements set forth in this article and attendant regulations as required to satisfy the stormwater flow rate capacity and velocity requirements set forth in the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.).

B. Any town, including a town that operates a regulated MS4, lying within a county that has adopted a VSMP in accordance with subsection A may decide, but shall not be required, to become subject to the county's VSMP. Any town lying within a county that operates an MS4 that became a regulated MS4 on or after January 1, 2014 may elect to become subject to the county's VSMP according to the deferred schedule established in subsection A. During the county's deferral period, the Department shall operate a VSMP on behalf of the town and address post-construction stormwater runoff and the required design criteria for stormwater runoff controls for the town as provided in subsection A. If a town lies within the boundaries of more than one county, the town shall be considered to be wholly within the county in which the larger portion of the town lies. Towns shall inform the Department of their decision according to a schedule established by the Department. Thereafter, the Department shall provide an annual schedule by which towns can submit applications to adopt a VSMP.

C. In support of VSMP authorities, the Department shall:

1. Provide assistance grants to localities not currently operating a local stormwater management program to help the localities to establish their VSMP.

2. Provide technical assistance and training.

3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the administration of components of their programs. The Department shall actively assist localities in the establishment of their programs and in the selection of a contractor or other entity that may provide support to the locality or regional support to several localities.

D. The Department shall develop a model ordinance for establishing a VSMP consistent with this article and its associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

E. Each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that shall be administered in conjunction with a local MS4 program and a local erosion and sediment control program if required pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), and which shall include the following:

1. Consistency with regulations adopted in accordance with provisions of this article;
2. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and
3. Provisions for the integration of the VSMP with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

F. The Board may approve a state entity, including the Department, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a Virginia Stormwater Management Program consistent with the requirements of this article and its associated regulations and the VSMP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

G. The Board shall approve a VSMP when it deems a program consistent with this article and associated regulations, including the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities.

H. A VSMP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to carry out or assist with the responsibilities of this article. A VSMP authority may enter into contracts with third-party professionals who hold certificates of competence in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30, to carry out any or all of the responsibilities that this article requires of a VSMP authority, including plan review and inspection but not including enforcement.

I. If a locality establishes a VSMP, it shall issue a consolidated stormwater management and erosion and sediment control permit that is consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.). When available in accordance with subsection J, such permit, where applicable, shall also include a copy of or reference to state VSMP permit coverage authorization to discharge.

J. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance.

K. Any VSMP adopted pursuant to and consistent with this article shall be considered to meet the stormwater management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and attendant regulations, and effective July 1, 2014, shall not be subject to local program review under the stormwater management provisions of the Chesapeake Bay Preservation Act.

L. All VSMP authorities shall comply with the provisions of this article and the stormwater management provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and related regulations. The VSMP authority responsible for regulating the land-disturbing activity shall require compliance with the issued permit, permit conditions, and plan specifications. The state shall enforce state permits.

M. In the case of a land-disturbing activity located on property controlled by a regional industrial facility authority established pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2, if a participating local member of such an authority also administers a VSMP, such locality shall be authorized to administer the VSMP on authority property, in accordance with an agreement entered into with all relevant localities and the existing VSMP for the property.

§ 62.1-44.15:27. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Virginia Programs for Erosion Control and Stormwater Management.

A. Any locality that operates a regulated MS4 or that administers a Virginia Stormwater Management Program (VSMP) as of July 1, 2017, shall be required to adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The VESMP shall be adopted according to a process established by the Department.

B. Any locality that does not operate a regulated MS4 and for which the Department administers a VSMP as of July 1, 2017, shall choose one of the following options and shall notify the Department of

its choice according to a process established by the Department:

1. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.);

2. Adopt and administer a VESMP consistent with the provisions of this article that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), except that the Department shall provide the locality with review of the plan required by § 62.1-44.15:34 and provide a recommendation to the locality on the plan's compliance with the water quality and water quantity technical criteria; or

3. Adopt and administer a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) that regulates any land-disturbing activity that (i) disturbs 10,000 square feet or more or (ii) disturbs 2,500 square feet or more in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). For such a land-disturbing activity in a Chesapeake Bay Preservation Area, the VESCP authority also shall adopt requirements set forth in this article and attendant regulations as required to regulate those activities in accordance with §§ 62.1-44.15:28 and 62.1-44.15:34.

The Board shall administer a VSMP on behalf of each VESCP authority for any land-disturbing activity that (a) disturbs one acre or more of land or (b) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

C. Any town that is required to or elects to adopt and administer a VESMP or VESCP, as applicable, may choose one of the following options and shall notify the Department of its choice according to a process established by the Department:

1. Any town, including a town that operates a regulated MS4, lying within a county may enter into an agreement with the county to become subject to the county's VESMP. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties that operates a VESMP.

2. Any town that chooses not to adopt and administer a VESMP pursuant to subdivision B 3 and that lies within a county may enter into an agreement with the county to become subject to the county's VESMP or VESCP, as applicable. If a town lies within the boundaries of more than one county, it may enter into an agreement with any of those counties.

3. Any town that is subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) may enter into an agreement with a county pursuant to subdivision C 1 or 2 only if the county administers a VESMP for land-disturbing activities that disturb 2,500 square feet or more.

D. Any locality that chooses not to implement a VESMP pursuant to subdivision B 3 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1 or 2. Any locality that chooses to implement a VESMP pursuant to subdivision B 2 may notify the Department at any time that it has chosen to implement a VESMP pursuant to subdivision B 1. A locality may petition the Board at any time for approval to change from fully administering a VESMP pursuant to subdivision B 1 to administering a VESMP in coordination with the Department pursuant to subdivision B 2 due to a significant change in economic conditions or other fiscal emergency in the locality. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall govern any appeal of the Board's decision.

E. To comply with the water quantity technical criteria set forth in this article and attendant regulations for land-disturbing activities that disturb an area of 2,500 square feet or more but less than one acre, any rural Tidewater locality may adopt a tiered approach to water quantity management pursuant to § 62.1-44.15:27.2.

F. In support of VESMP authorities, the Department shall provide technical assistance and training and general assistance to localities in the establishment and administration of their individual or regional programs.

G. The Department shall develop a model ordinance for establishing a VESMP consistent with this article.

H. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall, by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4 management program, if applicable, and which shall include the following:

1. Ordinances, policies, and technical materials consistent with regulations adopted in accordance with this article;

2. Requirements for land-disturbance approvals;

3. Requirements for plan review, inspection, and enforcement consistent with the requirements of this article, including provisions requiring periodic inspections of the installation of stormwater management measures. A VESMP authority may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the

measures required in the permit provide effective stormwater management;

4. Provisions charging each applicant a reasonable fee to defray the cost of program administration for a regulated land-disturbing activity that does not require permit coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee schedule established in accordance with subdivision 9 of § 62.1-44.15:28, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the program. A VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESMP authority's expense involved;

5. Provisions for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

6. Provisions for the coordination of the VESMP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing land disturbance in order to make the submission and approval of plans, issuance of land-disturbance approvals, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

I. The Board shall approve a VESMP when it deems a program consistent with this article and associated regulations.

J. A VESMP authority may enter into agreements or contracts with the Department, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections. A VESMP authority may enter into contracts with third-party professionals who hold certifications in the appropriate subject areas, as provided in subsection A of § 62.1-44.15:30, to carry out any or all of the responsibilities that this article requires of a VESMP authority, including plan review and inspection but not including enforcement.

K. A VESMP authority shall be required to obtain evidence of permit coverage from the Department's online reporting system, where such coverage is required, prior to providing land-disturbance approval.

L. The VESMP authority responsible for regulating the land-disturbing activity shall require compliance with its applicable ordinances and the conditions of its land-disturbance approval and plan specifications. The Board shall enforce permits and require compliance with its applicable regulations, including when serving as a VSMP authority in a locality that chose not to adopt a VESMP in accordance with subdivision B 3.

M. In the case of a land-disturbing activity located on property controlled by a regional industrial facility authority established pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2, if a participating local member of such an authority also administers a VESMP, such locality shall be authorized to administer the VESMP on authority property, in accordance with an agreement entered into with all relevant localities and the existing VSMP or VESMP for the property.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

THROUGH: Melanie D. Davenport
Director, Water Permitting Division

FROM: Joseph Crook
Regulatory Analyst, Central Office

DATE: May 18, 2022

SUBJECT: Regulatory Amendments to Incorporate Changes to the Certification of Nonpoint Source Nutrient Credits Regulation (9VAC25-900)
Final Exempt Action – Amendment Conforming to 2022 Legislation

This regulatory amendment to the Certification of Nonpoint Source Nutrient Credits Regulation (9VAC25-900) is presented to the State Water Control Board (Board) for your consideration as a final regulation.

During the 2022 Session of the General Assembly, Senate Bill (SB) 657 was passed. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations and transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. This final regulatory action will amend this State Water Control Board regulation to incorporate changes made by Chapter 356 (SB 657) of the 2022 Acts of Assembly of the General Assembly.

Also during the 2022 Session, SB 187 and SB 188 were passed. Senate Bill 188 authorizes the Department of Environmental Quality to allow the use of third-party long-term stewards to hold and manage the long-term management fund to maintain stream restoration projects, and Senate Bill 187 allows the Department of Environmental Quality to accelerate the release of nutrient

credits generated by a stream restoration project based on (i) a determination that the level of risk is low, (ii) the provision of additional financial assurance, and (iii) the experience of the applicant. The provisions of the bill become effective 30 days after the Department of Environmental Quality issues guidance regarding its implementation.

At your Board meeting scheduled for June 22, 2022, the Department will request that the Board adopt these amendments as final regulations, authorize their publication, and affirm that the Board will receive, consider and respond to petitions by any interested persons at any time with respect to reconsiderations or revision.

cc: Melissa Porterfield, Office of Regulatory Affairs

ATTACHMENTS:

- Draft Virginia Regulatory Town Hall Documents (TH-09)
 - Revisions to CH 900 in response to SB657, SB187, and SB 188 (2022 GA session)
- Chapter 356 of the Virginia Acts of Assembly of the 2022 General Assembly
 - SB 657
 - SB 187
 - SB 188
- Final Exempt – GA2022 Amended Regulatory Text
 - 9VAC25-900 – RIS PROJECT 7164

1 **Project 7193 - Exempt Final**

2 **State Water Control Board**

3 **Final exempt - CH900 revisions needed in response to SB187 and SB188 (2022 GA) and**
4 **Board Bill revisions**

5 **9VAC25-900-10. Definitions.**

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

8 "300 animal units" means the term as defined in 9VAC25-192-10.

9 "Act" means the Chesapeake Bay Watershed Nutrient Credit Exchange Program, Article 4.02
10 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

11 "Animal feeding operation" means the term as defined by 9VAC25-31-10.

12 "Applicant" means the person who submits an application to the department for nutrient credit
13 certification pursuant to this chapter.

14 "Bankfull event" means the storm event that corresponds with the stream stage at its incipient
15 point of flooding. The bankfull discharge associated with the bankfull event is the flow that
16 transports the majority of a stream's sediment load over time and thereby forms and maintains
17 the channel dimension, pattern, and profile.

18 "Baseline" means the practices, actions, or levels of reductions that must be in place before
19 credits can be generated. The best management practices to be implemented for achieving
20 baseline are provided in 9VAC25-900-100.

21 "Best management practice," "practice," or "BMP" means a structural practice, nonstructural
22 practice, or other management practice used to prevent or reduce nutrient loads reaching surface
23 waters or the adverse effects thereof.

24 "Board" means the State Water Control Board. However, when used outside the context of
25 the promulgation of regulations, including regulations to establish general permits, "Board" means
26 the Department of Environmental Quality.

27 "Certification of nutrient credits" or "nutrient credit certification" means the approval of nutrient
28 credits issued by the department as specified in 9VAC25-900-80. Nutrient credit certification does
29 not include the certification of point source credits generated by point sources regulated under
30 the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant
31 to § 62.1-44.19:14 of the State Water Control Law.

32 "Chesapeake Bay Watershed" means the land areas draining to the following Virginia river
33 basins: the Potomac River Basin, the James River Basin, the Rappahannock River Basin, the
34 Chesapeake Bay and small coastal basins, or the York River Basin.

35 "Concentrated animal feeding operation" means the term as defined by 9VAC25-31-10.

36 "Cropland" means land that is used for the production of grain, oilseeds, silage or industrial
37 crops not defined as hay or pasture.

38 "DCR" means the Department of Conservation and Recreation.

39 "Delivery factor" means the estimated percentage of a total nitrogen or total phosphorus load
40 delivered to tidal waters as determined by the specific geographic location of the nutrient source.
41 For point source discharges the delivery factor accounts for attenuation that occurs during riverine
42 transport between the point of discharge and tidal waters. For nonpoint source loads the delivery
43 factor accounts for attenuation that occurs during riverine transport as well as attenuation between
44 the nutrient source and the edge of the nearest stream. Delivery factors values shall be as

45 specified by the department. In the Chesapeake Bay Watershed, the Chesapeake Bay Program
46 Partnership's approved delivery factors shall be used.

47 "Department" means the Department of Environmental Quality.

48 "Director" means the Director of the Department of Environmental Quality or his designee.

49 "Exchange" means the transaction in which a person acquires released nutrient credits
50 produced by a nutrient credit-generating project.

51 "Field office technical guide" or "FOTG" means technical guides about conservation of soil,
52 water, air, and related plant and animal resources and are the primary scientific reference for the
53 U.S. Department of Agriculture's Natural Resource Conservation Service. These guides are used
54 in each field office and are localized so that they apply specifically to the geographic area for
55 which they are prepared.

56 "Hayland" means land that is used to grow a grass, legume, or other plants such as clover or
57 alfalfa, which is cut and dried for feed.

58 "Highly erodible soils" means land that is defined as highly erodible by the Sodbuster,
59 Conservation Reserve, and Conservation Compliance parts of the Food Security Act of 1985 (P.L.
60 99-198) and the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624). Lists of
61 highly erodible and potential highly erodible map units are maintained in NRCS field office
62 technical guide.

63 "HUC" means the hydrologic unit code.

64 "Impaired waters" means those waters identified as impaired in the 305(b)/303(d) Water
65 Quality Assessment Integrated Report prepared pursuant to § 62.1-44.19:5 of the State Water
66 Control Law.

67 "Implementation plan" means a plan that has been developed to meet the requirements of
68 9VAC25-900-120 and is submitted as part of the application.

69 "Invasive plant species" means non-native plant species that are contained on DCR's Virginia
70 Invasive Plant Species List.

71 "Innovative practice" means practices or BMPs not approved by the Chesapeake Bay
72 Program Partnership or the Virginia Stormwater BMP Clearinghouse. Nutrient credits generated
73 by innovative practices may only be certified as term credits.

74 "Landowner" means any person or group of persons acting individually or as a group that
75 owns the parcel on which a nutrient credit-generating project is sited including: (i) the
76 Commonwealth or any of its political subdivisions, including localities, commissions, and
77 authorities; (ii) any public or private institution, corporation, association, firm, or company
78 organized or existing under the laws of this or any other state or country; or (iii) any officer or
79 agency of the United States.

80 "Land use controls" means legal measures or instruments that restrict the activity, use, and
81 access to property.

82 "Land use conversion" means a change from a more intensive to less intensive land use
83 resulting in nutrient reductions.

84 "Management area" means all contiguous parcels deeded to the same landowner that
85 includes the site of the nutrient credit-generating project within its boundaries. The term
86 contiguous means the same or adjacent parcels that may be divided by public or private right-of-
87 way. For a public entity that owns or operates an MS4 and generates credits within the MS4
88 service area, the management area is the MS4 service area.

89 "Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent
90 practicable and then compensating for remaining unavoidable impacts of a proposed action.

91 "Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is
92 developed and approved in accordance with all applicable federal and state laws or regulations
93 for the establishment, use and operation of mitigation banks and is operating under a signed
94 mitigation banking instrument.

95 "Mitigation banking instrument" means the legal document for the establishment, operation,
96 and use of a stream or wetland mitigation bank.

97 "MS4" means a municipal separate storm sewer system as defined in 9VAC25-870-10.

98 "MS4 service area" means (i) for Phase I MS4 permittees, the service area delineated in
99 accordance with the permit issued pursuant to 9VAC25-870-380 A 3; and (ii) for Phase II MS4
100 permittees, the term as described in 9VAC25-890.

101 "Non-land use conversion" means practices, except for land use conversion, that are used by
102 a nutrient credit-generating project to produce nutrient reductions.

103 "Nonpoint source pollution" or "nonpoint source" means pollution such as sediment, nitrogen,
104 phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but
105 rather are washed from the land surface in a diffuse manner by stormwater runoff.

106 "NRCS" mean the U.S. Department of Agriculture's Natural Resource Conservation Service.

107 "Nutrient credit" or "credit" means a nonpoint source nutrient reduction that is certified
108 pursuant to this chapter and expressed in pounds of phosphorus and nitrogen either (i) delivered
109 to tidal waters when the credit is generated within the Chesapeake Bay Watershed or (ii) as
110 otherwise specified when generated in the Southern Rivers watersheds. Nutrient credit does not
111 include point source nitrogen credits or point source phosphorus credits as defined in § 62.1-
112 44.19:13 of the Code of Virginia.

113 "Nutrient credit-generating entity" means an entity that implements practices for the
114 generation of nonpoint source nutrient credits.

115 "Nutrient credit-generating project" or "project" means a project developed to reduce the load
116 of nitrogen and phosphorous nonpoint source pollution in order to generate nutrient credits for
117 certification pursuant to this chapter.

118 "Nutrient reductions" means the reduction in the load of nitrogen and phosphorous nonpoint
119 source pollution.

120 "Owner" means the Commonwealth or any of its political subdivisions, including sanitation
121 district commissions and authorities and any public or private institution, corporation, association,
122 firm, or company organized or existing under the laws of this or any other state or country, or any
123 officer or agency of the United States, or any person or group of persons acting individually or as
124 a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible
125 for any nutrient credit-generating project.

126 "Pasture" means land that supports the grazing of domesticated animals for forages.

127 "Performance standards" means the minimum objectives or specifications required of a
128 particular management practice by the department in order to assure predicted nutrient reductions
129 will be achieved.

130 "Perpetual nutrient credits" or "perpetual credits" mean credits that are generated by practices
131 that result in permanent nutrient reductions from baseline and certified as permanent in
132 accordance with this chapter.

133 "Person" means any individual, corporation, partnership, association, state, municipality,
134 commission, or political subdivision of a state, governmental body, including a federal, state, or
135 local entity as applicable, any interstate body or any other legal entity.

136 "Potential nutrient credits" means the possible credits generated by a nutrient credit-
137 generating project as calculated pursuant to 9VAC25-900-110. These potential nutrient credits

138 shall be expressed in terms of the estimated number of phosphorus and nitrogen credits
139 generated.

140 "Redevelopment" means a project that includes new development on previously developed
141 land.

142 "Registry" means the online Virginia Nutrient Credit Registry established and maintained by
143 the department in accordance with § 62.1-44.1.19:20 D of the Code of Virginia.

144 "Released nutrient credit" means credits that the department has determined to be eligible for
145 placement on the Virginia Nutrient Credit Registry.

146 "Restoration" means the reestablishment of a wetland, stream, or other aquatic resource in
147 an area where it previously existed. Wetland restoration means the reestablishment of wetland
148 hydrology, soils, and vegetation in an area where a wetland previously existed. Stream restoration
149 means the process of converting an unstable, altered, or degraded stream corridor, including
150 adjacent areas and floodplains, to its natural conditions.

151 "Retrofit" means a project that provides improved nutrient reductions to previously developed
152 land through the implementation of new BMPs or upgrades to existing BMPs.

153 "Site" means the physical location within the management area where the nutrient credit-
154 generating project and its associated practices, both baseline and credit-generating, are located.

155 "Site protection instrument" means a deed restriction, conservation easement, or other legal
156 mechanism approved by the department that provides assurance that the credits will be
157 maintained in accordance with this chapter and the certification requirements.

158 "Southern Rivers watersheds" means the land areas draining to the following river basins: the
159 Albemarle Sound, Coastal; the Atlantic Ocean, Coastal; the Big Sandy River Basin; the Chowan
160 River Basin; the Clinch-Powell River Basin; the New Holston River Basin (Upper Tennessee); the
161 New River Basin; the Roanoke River Basin; or the Yadkin River Basin.

162 "State waters" means all water, on the surface and under the ground, wholly or partially within
163 or bordering the Commonwealth or within its jurisdiction, including wetlands.

164 "Steward" or "long-term steward" means any person who is responsible for implementation of
165 the long-term management plan of a perpetual nutrient credit-generating project.

166 "Structural BMPs" means any man-made stormwater control measure or feature that requires
167 routine maintenance in order to function or provide the hydrologic, hydraulic, or water quality
168 benefit as designed. Structural practices include bioretention, infiltration facilities, wet ponds,
169 extended detention, wet and dry swales, permeable pavement, rainwater harvesting, vegetated
170 roofs, underground or surface chambers or filters, and other manufactured treatment devices
171 (MTDs).

172 "T" means the soil loss tolerance rate as defined by the NRCS.

173 "Term nutrient credit" or "term credit" means nutrient reduction activities that generate credits
174 for a determined and finite period of at least one year but no greater than five years.

175 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations
176 (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading,
177 and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or
178 other appropriate measure. The TMDL process provides for point versus nonpoint source trade-
179 offs. TMDLs in Virginia are expressed as both a daily load and an annual load. For nutrient trading,
180 annual loads are most often utilized.

181 "Tributary" means those river basins for which separate tributary strategies were prepared
182 pursuant to § 2.2-218 of the Code of Virginia and includes the Potomac, Rappahannock, York,
183 and James River basins, and the Eastern Coastal Basin, which encompasses the creeks and
184 rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake

185 Bay. For areas outside of the Chesapeake Bay Watershed, "tributary" includes the following
 186 watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-
 187 Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

188 "Urban lands" means lands characterized by developed areas with buildings, asphalt,
 189 concrete, suburban gardens, and a systematic street pattern. Classes of urban development
 190 include residential, commercial, industrial, institutional, transportation, communications, utilities,
 191 and mixed urban. Undeveloped land surrounded by developed areas, such as cemeteries, golf
 192 courses, and urban parks is recognized as urban lands.

193 "VACS BMP Manual" means the Virginia Agricultural Cost Share BMP Manual (.
 194

194 "Virginia Chesapeake Bay TMDL Watershed Implementation Plan," "Watershed
 195 Implementation Plan," or "WIP" means the Phase I watershed implementation plan strategy
 196 submitted by Virginia and approved by the U.S. Environmental Protection Agency (EPA) in
 197 December 2010 to meet the nutrient and sediment allocations prescribed in the Chesapeake Bay
 198 Watershed TMDL or any subsequent revision approved of EPA.

199 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a
 200 document issued by the ~~State Water Control Board~~ board department pursuant to the State Water
 201 Control Law authorizing, under prescribed conditions, the potential or actual discharge of
 202 pollutants from a point source to surface waters and the use or disposal of sewage sludge.

203 "Virginia Stormwater Management Program" or "VSMP" means a program to manage the
 204 quality and quantity of runoff resulting from land-disturbing activities and includes such items as
 205 local ordinances, rules, permit requirements, annual standards and specifications, policies and
 206 guidelines, technical materials, and requirements for plan review, inspection, and enforcement,
 207 where authorized in the Stormwater Management Act and pursuant to 9VAC25-870, 9VAC25-
 208 880, or 9VAC25-890.

209 "Virginia Water Protection permit" or "VWP permit" means an individual or general permit
 210 issued by the ~~board~~ department under § 62.1-44.15:20 of the Code of Virginia that authorizes
 211 activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as
 212 Virginia's Section 401 certification.

213 "VPA" means Virginia Pollution Abatement.

214 "VPDES" means Virginia Pollutant Discharge Elimination System.

215 "VSMP authority" means a Virginia stormwater management program authority as defined in
 216 9VAC25-870-10.

217 "VWP" means Virginia Water Protection.

218 "Water body with perennial flow" means a body of water that flows in a natural or man-made
 219 channel year-round during a year of normal precipitation as a result of groundwater discharge or
 220 surface runoff. Such water bodies exhibit the typical biological, hydrological, and physical
 221 characteristics commonly associated with the continuous conveyance of water.

222 "Water Quality Guide" means Virginia's Forestry Best Management Practices for Water
 223 Quality.

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

228 **9VAC25-900-20. Authority and delegation of authority. (Repealed.)**

229 A. ~~This chapter is issued under authority of § 62.1-44.19:20 of the Act.~~

230 B. ~~The director may perform any act of the board provided under this chapter except as limited~~
 231 ~~by § 62.1-44.14 of the Code of Virginia.~~

232 **9VAC25-900-30. Purpose and applicability.**

233 A. The purpose of this chapter is to establish standards and procedures pertaining to the
234 certification of nutrient credits that will be placed on the registry for exchange.

235 B. This chapter applies to all persons who submit an application for and to all persons that
236 receive a certification of nutrient credits from the department in accordance with the Act and this
237 chapter.

238 C. Nutrient credits from stormwater nonpoint nutrient credit-generating projects in receipt of a
239 Nonpoint Nutrient Offset Authorization for Transfer letter from the department prior to September
240 1, 2020, shall be considered certified nutrient credits and shall not be subject to further nutrient
241 credit certification requirements or to the credit retirement requirements of this chapter. However,
242 such projects shall be subject to all other provisions of this chapter, including registration of
243 nutrient credits under 9VAC25-900-90 and the requirements of Part IV (9VAC25-900-140 et seq.)
244 of this chapter including inspection, reporting, and enforcement.

245 D. This chapter does not apply to the certification of point source nutrient credits that may be
246 generated from effective nutrient controls or removal practices associated with the types of
247 facilities or practices historically regulated by the board or department, such as water withdrawal
248 and treatment and wastewater collection, treatment, and beneficial reuse.

249 E. This chapter does not apply to stream or wetland restoration projects constructed prior to
250 July 1, 2005, as no usable nutrient reductions are deemed to be generated from these projects
251 and, therefore, no nutrient credits can be certified.

252 **9VAC25-900-40. Relationship to other laws and regulations.**

253 A. Specific requirements regarding the use of nutrient credits are found in the following
254 regulations and statutes:

- 255 1. Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870).
 - 256 a. VSMP Individual Permits for Discharges from Construction Activities. As specified
257 in § 62.1-44.19:21 B of the Act, those applicants required to comply with water quality
258 requirements for land-disturbing activities operating under a construction individual
259 permit issued pursuant to 9VAC25-870 may acquire and use perpetual nutrient credits
260 placed on the registry for exchange.
 - 261 b. VSMP Individual Permits for Municipal Separate Storm Sewer Systems. As
262 specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and
263 transfer nutrient credits for purposes of compliance with any wasteload allocations
264 established as effluent limitations in an MS4 individual permit issued pursuant to
265 9VAC25-870. Such method of compliance may be approved by the department
266 following review of a compliance plan submitted by the permittee that includes the use
267 of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.
- 268 2. General VPDES Permit for Discharges of Stormwater from Construction Activities
269 (9VAC25-880). As specified in § 62.1-44.19:21 B of the Act, those applicants required to
270 comply with water quality requirements for land-disturbing activities operating under a
271 general VSMP permit for discharges of stormwater from construction activities issued
272 pursuant to 9VAC50-880 may acquire and use perpetual nutrient credits placed on the
273 registry for exchange.
- 274 3. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate
275 Storm Sewer Systems (9VAC25-890). As specified in § 62.1-44.19:21 A of the Act, an
276 MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance
277 with any wasteload allocations established as effluent limitations in an MS4 general permit
278 issued pursuant to 9VAC25-890. Such method of compliance may be approved by the

279 department following review of a compliance plan submitted by the permittee that includes
280 the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

281 4. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-
282 31). As specified in § 62.1-44.19:21 C of the Act, owners of confined or concentrated
283 animal feeding operations issued individual permits pursuant to 9VAC25-31 may acquire,
284 use, and transfer credits for compliance with any wasteload allocations contained in the
285 provisions of a VPDES permit. Such method of compliance may be approved by the
286 department following review of a compliance plan submitted by the permittee that includes
287 the use of nutrient credits.

288 5. Virginia Pollutant Discharge Elimination System (VPDES) Permits for Discharges of
289 Storm Water Associated with Industrial Activity. As specified in § 62.1-44.19:21 D of the
290 Act, owners of facilities registered for coverage under 9VAC25-151 for the general VPDES
291 permit or issued a VPDES permit regulating stormwater discharges that requires nitrogen
292 and phosphorus monitoring at the facility may acquire, use, and transfer credits for
293 compliance with any wasteload allocations established as effluent limitations in a VPDES
294 permit. Such method of compliance may be approved by the department following review
295 of a compliance plan submitted by the permittee that includes the use of nutrient credits.

296 6. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit
297 Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in
298 the Chesapeake Bay Watershed in Virginia (9VAC25-820). Nutrient credits certified
299 pursuant to this chapter may be acquired to offset mass loads of total nitrogen or total
300 phosphorus discharged by new or expanded facilities regulated by 9VAC25-820.

301 B. This chapter shall not be construed to limit or otherwise affect the authority of the board or
302 department to establish and the department to enforce more stringent water quality-based effluent
303 limitations for total nitrogen or total phosphorus in permits where those limitations are necessary
304 to protect local water quality. The exchange or acquisition of credits pursuant to this chapter shall
305 not affect any requirement to comply with such local water quality-based limitations.

306 **9VAC25-900-90. Nutrient credit release and registration.**

307 A. Retirement of credits.

308 1. Pursuant to the requirements of § 62.1-44.19:20 of the Act, 5.0% of the total credits
309 certified will be retired by the department at the time of nutrient credit certification and will
310 not be placed on the registry for exchange.

311 2. When phosphorus credits are acquired in accordance with 9VAC25-870-69, the
312 associated nitrogen credits generated by the nutrient credit-generating project will be
313 retired and removed from the registry by the department.

314 3. When nitrogen credits are acquired for purposes other than compliance with 9VAC25-
315 870-69, the associated phosphorus credits generated by the nutrient credit-generating
316 project shall not be available for compliance under 9VAC25-870-69.

317 4. Except as limited by this subsection, associated nitrogen and phosphorus credits
318 generated by a nutrient credit-generating project may be exchanged independently.

319 B. Schedule of release of nutrient credits. The department shall establish a schedule for
320 release of credits as follows:

321 1. For nutrient credit-generating projects using land use conversion, 25% of the credits will
322 be released by the department after the department has verified completion of the
323 conditions of the nutrient credit certification. For afforestation projects, an additional 25%
324 of credits will be released by the department after the site has been planted with a
325 minimum of 400 woody stems per acre. The remaining balance of credits will be released
326 by the department after it is satisfied that the implementation plan's performance criteria

327 required pursuant to 9VAC25-900-120 has been achieved. When a request for credit
328 release is made concurrently with the application for nutrient credit certification from land
329 conversion practices, the concurrent 25% initial release, and additional 25% release if
330 planting has occurred, shall be processed on the same timeline as the application as
331 provided in 9VAC25-900-80 C. When the request for credit release is from a previously
332 approved land conversion project, the department shall schedule a site visit, if warranted,
333 within 30 days of the request and shall deny, approve, or approve with conditions the
334 release of the remaining 75% of the nutrient credits within 15 days of the site visit or
335 determination that a site visit is not warranted.

336 2. For nutrient credit-generating projects using wetland or stream restoration, after
337 construction 25% of the credits may be released by the department after the department
338 has verified completion of the conditions of the nutrient credit certification. Every
339 monitoring year thereafter, 25% of the credits may be released if all performance
340 standards are met, the area or channel is stable, and, for streams, evidence is presented
341 that a bankfull event occurred within the monitoring year. For streams, if a bankfull event
342 did not occur, but performance standards are met and the channel is stable, 10% of the
343 credits may be released. No additional credits will be released after the fourth monitoring
344 year until a bankfull event has occurred. After the fourth monitoring year, if a bankfull event
345 occurs, the channel is stable, and all performance standards are met, 25% of the credits
346 may be released that monitoring year, not to exceed the remaining credits available. The
347 schedule for release of credits shall also require, prior to the release of credits, the
348 approval of any required financial assurance mechanism established pursuant to Part VI
349 (9VAC25-900-230 et seq.) of this chapter. The Department may accelerate the release of
350 a maximum of 50 percent of nutrient credits from a stream restoration project based on (i)
351 a determination that the level of risk for restoration failure is low, (ii) the provision of
352 additional financial assurance in an amount adequate to cover the cost of project repair or
353 replacement in the event of failure, and (iii) the experience of the applicant or the
354 applicant's agents who will implement the stream restoration project.

355 3. For nutrient credit-generating projects using practices other than land use conversion
356 or wetland or stream restoration, the schedule for release of credits will be determined by
357 the department on a case-by-case basis and provided to the applicant with the nutrient
358 credit certification. For projects using structural BMPs, the schedule shall also require,
359 prior to release of credits, the approval of any required financial assurance mechanism
360 established pursuant to Part VI (9VAC25-900-230 et seq.) of this chapter.

361 C. Registration of nutrient credits. Credits will be placed on the registry and classified as term
362 or perpetual credits by the department. The registry will also indicate the number of credits that
363 have been released for exchange. Only credits released by the department are available for
364 exchange.

365 **9VAC25-900-150. Recordkeeping and reporting.**

366 A. The owner of the nutrient credit-generating project shall maintain all records relevant to the
367 management, operations, and maintenance of the nutrient credit-generating project, including
368 copies of all reports required by this chapter, the nutrient credit certification or the implementation
369 plan, operations and maintenance plan, or financial assurance approved under this chapter.
370 Records of all data used to complete the application for certification of nutrient credits shall be
371 kept. All records shall be maintained for at least five years following the final exchange of any
372 credits. This period of retention shall be extended automatically during the course of any
373 unresolved litigation regarding the regulated activity or regarding control standards applicable to
374 the owner of the nutrient credit-generating project, or as requested by the ~~board~~ department.

375 B. All applications, reports, or information submitted to the department shall be signed and
376 certified as required by 9VAC25-900-130.

377 C. Reporting requirements.

378 1. The owner of the nutrient credit-generating project shall give advance notice to the
379 department as soon as possible of any planned physical alterations or additions to the
380 project when the alteration or addition could change the amount of nutrient reductions
381 generated.

382 2. The owner of the nutrient credit-generating project shall give advance notice to the
383 department of any planned changes in the project that may result in noncompliance with
384 the Act, this chapter, or the nutrient credit certification.

385 3. Reports of compliance or noncompliance with or any progress reports on achieving
386 conditions specified in the nutrient credit certification shall be submitted no later than 14
387 days following each schedule date.

388 4. Where the owner of the nutrient credit-generating project becomes aware that incorrect
389 information has been submitted in an application for nutrient credit certification or in any
390 report to the department, the owner shall promptly submit the corrected information.

391 5. Each owner shall submit an annual report on the status of the nutrient credit-generating
392 project operations including credit-generating practices, confirmation of the continued
393 implementation and maintenance of practices required to establish baseline in accordance
394 with 9VAC25-900-100, statement of financial assurances, and an up-to-date credit ledger
395 detailing credits available for exchange, credits exchanged, and associated purchaser
396 information. This report shall contain recent photographs of any structural BMPs
397 implemented to achieve baseline or for nutrient credit generation. The report shall cover
398 the period from July 1 through June 30 of each year and be submitted annually by August
399 15 unless an alternative reporting period and submittal date are provided for in the nutrient
400 credit certification.

401 6. In addition to the annual report detailed in subdivision 5 of this subsection, nutrient
402 credit-generating projects utilizing wetland or stream restoration shall conduct post-
403 construction monitoring and submit monitoring reports, according to the monitoring plan
404 approved as part of the implementation plan pursuant to 9VAC25-900-120.

405 7. Exchange of credits shall be recorded on the registry. The exchange of credits by the
406 owner of the nutrient credit-generating project shall be reported to the department within
407 14 calendar days of the date of the exchange. This report shall include:

- 408 a. The identification for the credits exchanged;
- 409 b. The name of and contact information for the buyer;
- 410 c. The name of the seller;
- 411 d. The amount of credits exchanged; and
- 412 e. If applicable, the name of the facility and the associated permit number that shall
413 use the purchased credits.

414 **9VAC25-900-160. Enforcement and penalties.**

415 The ~~board~~ department may enforce the provisions of this chapter utilizing all applicable
416 procedures under the State Water Control Law.

417 **9VAC25-900-230. Financial assurance applicability.**

418 A. An owner of a nutrient credit-generating project that utilizes structural BMPs for the
419 generation of perpetual credits shall submit and maintain financial assurance in accordance with
420 this part. The financial assurance mechanism shall be submitted to and approved by the
421 department prior to the release of credits.

422 B. An owner of a nutrient credit-generating project that utilizes structural BMPs for the
 423 generation of term credits with terms that exceed one year shall submit and maintain financial
 424 assurance in accordance with this part. However, an owner of a nutrient credit-generating project
 425 that utilizes structural BMPs for the generation of term credits with terms that exceed one year
 426 shall not be required to submit and maintain financial assurance in accordance with this part,
 427 provided that the department annually approves the generation of the term nutrient credits prior
 428 to release of the credits. In accordance with 9VAC25-900-90 B, the financial assurance
 429 mechanism shall be submitted to and approved by the department prior to the release of credits.
 430 For the purposes of this part, term credit shall refer to credit with a term greater than one year but
 431 not perpetual.

432 C. An owner of a nutrient credit-generating project using proposed new wetland or stream
 433 restoration practices not subject to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia for
 434 the generation of perpetual credits shall be required to submit and maintain financial assurance
 435 in accordance with this chapter. In accordance with 9VAC25-900-90 B, the financial assurance
 436 mechanism shall be submitted to and approved by the department prior to the release of credits.
 437 The following financial assurances shall be provided for these new wetland or stream restoration
 438 projects:

- 439 1. A monitoring plan financial assurance mechanism shall be established to ensure
 440 implementation of the monitoring plan pursuant to 9VAC25-900-120 for any nutrient
 441 credits generated from wetland or stream restoration. When the owner conducts the
 442 required monitoring and submits a complete monitoring report as specified in the
 443 monitoring plan and report requirements, then the owner may request a reduction of the
 444 required financial assurance amount equivalent to the cost of one year of monitoring,
 445 subject to department approval. If any funds remain in the financial assurance mechanism
 446 after the monitoring period, the mechanism shall be maintained until the final monitoring
 447 report is submitted and approved, at which point the mechanism shall be released by the
 448 department; and
- 449 2. A long-term management fund financial assurance mechanism shall be established in
 450 support of required long-term management plan tasks pursuant to 9VAC25-900-120 for
 451 any nutrient credits generated from wetland or stream restoration. Long-term management
 452 funds shall be placed in a separate interest bearing trust account in an appropriate
 453 financial institution and may be funded from a sufficient percentage of all credit sale
 454 proceeds, a single lump sum payment, or an approved schedule of payments, subject to
 455 department approval. No long-term management funds shall be used to finance any
 456 expense or activity other than those specified in the long-term management plan unless
 457 approved by the department. Responsibility for and access to the long-term management
 458 fund is given to the owner or long-term steward and may be transferred to any new long-
 459 term steward that is designated by the owner and approved by the department.
- 460 3. In lieu of the long-term management fund trust account for stream restoration projects
 461 established in 9VAC25-900-230 C 2, a third-party long-term steward approved by the
 462 Department, such as a public agency, nongovernmental organization or private land
 463 manager, may hold long-term management funds in a separate interest-bearing account
 464 to be used only for the long-term management of the stream restoration project.

465 D. When the nutrient credits are generated or used by a locality, authority, utility, sanitation
 466 district, or owner operating an MS4 or a point source permitted under 9VAC25-870, the existence
 467 of tax or rate authority may be used by such entity at its option in satisfaction of the financial
 468 assurance required pursuant to this part.

469 **9VAC25-900-270. Financial assurance requirements for perpetual credits.**

470 A. Subject to the requirements and limitations outlined in this section, the owner shall
 471 demonstrate financial assurance for the nutrient credit-generating project generating perpetual
 472 nutrient credits using any one or combination of the mechanisms specified in 9VAC25-900-290
 473 through 9VAC25-900-330. However, for restoration projects, the owner may only use a trust fund
 474 as provided in 9VAC25-900-290 to demonstrate financial assurance for the long-term
 475 management fund as described in 9VAC25-900-230 C 2- unless a third-party long-term steward
 476 is approved by the Department in accordance with 9VAC25-900-230 C 3.

477 B. The financial assurance mechanism used shall provide funding for the full amount of the
 478 cost estimate or of the sum of all cost estimates at all times.

479 C. The owner may only establish or continue to use insurance, as outlined in 9VAC25-900-
 480 330, to demonstrate financial assurance for that portion of the total cost estimate that does not
 481 include credits that have been exchanged. On an annual basis, the owner shall either establish
 482 or increase the noninsurance mechanism outlined in 9VAC25-900-290 through 9VAC25-900-320
 483 in an amount to be determined in accordance with the following formula:

484
$$CE/TCIAS * CEDAAP$$

485 where:

486 CE = Cost Estimate

487 TCIAS = Total Number of Credits Initially Available for Exchange

488 CEDAAP = Number of Credits Exchanged During the Applicable Annual Period

489 D. The owner shall establish or increase the mechanism as required by subsection C of this
 490 section no later than 30 days after the current anniversary date of the nutrient credit certification.
 491 The applicable annual period for credits exchanged is the one culminating on the anniversary
 492 date of the nutrient credit certification.

493 E. The financial assurance mechanisms used to provide evidence of the financial assurance
 494 shall ensure that the funds necessary will be available whenever they are needed.

495 F. After submittal of a complete financial assurance mechanism, the department shall notify
 496 the owner of the tentative decision to approve or reject the financial assurance mechanism.

497 G. A financial assurance mechanism must be in a form that ensures that the department will
 498 receive proper notification in advance of any termination or revocation. The owner may, at its
 499 discretion and with prior approval of the department, replace the financial assurance or financial
 500 institution that issued the financial assurance. The owner shall provide the department with prior
 501 notice of its desire to replace the issuing institution and a draft of the new mechanism for review.
 502 The provisions of the new mechanism shall conform to the provisions of the former mechanism
 503 and this part.

504 **9VAC25-900-280. Allowable financial mechanisms.**

505 A. Subject to the limitations and requirements outlined in 9VAC25-900-260 and 9VAC25-900-
 506 270, an owner of nutrient credit-generating project using structural BMPs to generate term or
 507 perpetual nutrient credits and required to submit financial assurance pursuant to 9VAC25-900-
 508 230 may use any one or combination of mechanisms listed in 9VAC25-900-290 through 9VAC25-
 509 900-330 to meet the financial assurance requirements of this chapter.

510 B. Subject to the limitation and requirements outlined in 9VAC25-900-270, an owner of a
 511 nutrient credit-generating project utilizing wetland or stream restoration practices to generate
 512 perpetual credits and required to submit financial assurance pursuant to 9VAC25-900-230, may
 513 use any one or combination of mechanisms listed in 9VAC25-900-290 through 9VAC25-900-330
 514 to meet the financial assurance requirements for the monitoring plan; however, only a trust fund
 515 may be used to meet the financial assurance requirements for the long-term management fund.

516 unless a third-party long-term steward is approved by the Department in accordance with
 517 9VAC25-230 C 3.

518 **9VAC25-900-350. Wording of the financial assurance mechanism.**

519 A. The wording of the financial assurance mechanisms shall be as provided in this section.

520 B. Wording of trust agreements.

521 (NOTE: Instructions in parentheses are to be replaced with the applicable information for the
 522 nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration)
 523 and the non-relevant information and parentheses deleted.)

524 **TRUST AGREEMENT**

525 Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner),
 526 a (State) (corporation, partnership, association, proprietorship), the "Grantor," and (name of
 527 corporate trustee), a (State corporation) (national bank), the "Trustee."

528 Whereas, the State Water Control Board has established certain regulations applicable to the
 529 Grantor, requiring that the owner of a nutrient credit-generating project must provide assurance
 530 that funds will be available when needed for (operation and maintenance and/or repair or
 531 replacement of the project's structural BMPs) (monitoring and/or long-term maintenance of the
 532 project's wetland/stream restoration),

533 Whereas, the Grantor has elected to establish a trust to provide (all or part of) such financial
 534 assurance for the project identified herein,

535 Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be
 536 the trustee under this agreement, and the Trustee is willing to act as trustee,

537 Now, therefore, the Grantor and the Trustee agree as follows:

538 Section 1. Definitions. As used in this Agreement:

539 A. The term "fiduciary" means any person who exercises any power of control, management,
 540 or disposition or renders investment advice for a fee or other compensation, direct or indirect, with
 541 respect to any moneys or other property of this trust fund, or has any authority or responsibility to
 542 do so, or who has any authority or responsibility in the administration of this trust fund.

543 B. The term "Grantor" means the owner who enters into this Agreement and any successors
 544 or assigns of the Grantor.

545 C. The term "Trustee" means the Trustee who enters into this Agreement and any successor
 546 Trustee.

547 Section 2. Identification of Project and Cost Estimates. This Agreement pertains to project(s) and
 548 cost estimates identified on attached Schedule A.

549 (NOTE: On Schedule A, for each project, list, as applicable, name, address, and the current cost
 550 estimates for operation and maintenance and/or repair or replacement for the project's structural
 551 BMPs; or the current cost estimates for the monitoring and/or long-term maintenance of the
 552 project's wetland/stream restoration, or portions thereof, for which financial assurance is
 553 demonstrated by this Agreement.)

554 Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the
 555 "Fund," for the benefit of the Department of Environmental Quality, Commonwealth of Virginia.
 556 The Grantor and the Trustee intend that no third party have access to the Fund except as herein
 557 provided. The Fund is established initially as property consisting of cash or securities, which are
 558 acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other
 559 property subsequently transferred to the Trustee is referred to as the fund, together with all
 560 earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to
 561 this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The
 562 Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from

563 the Grantor, any payments to discharge any liabilities of the Grantor established by the
564 Commonwealth of Virginia's Department of Environmental Quality.

565 Section 4. Payment for (operation and maintenance and/or repair or replacement for the project's
566 structural BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream
567 restoration). The Trustee will make such payments from the Fund as the Department of
568 Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment
569 of the costs of (operation and maintenance and/or repair or replacement for the project's structural
570 BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration) of
571 the project covered by this Agreement. The Trustee will reimburse the Grantor or other persons
572 as specified by the Department of Environmental Quality, Commonwealth of Virginia, from the
573 Fund for (operation and maintenance and/or repair or replacement for the project's structural
574 BMPs) (monitoring and/or long-term maintenance for the project's wetland/stream restoration)
575 expenditures in such amounts as the Department of Environmental Quality will direct, in writing.
576 In addition, the Trustee will refund to the Grantor such amounts as the Department of
577 Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part
578 of the Fund as defined herein.

579 Section 5. Payments Comprising the Fund. Payments made to the Trustee for the fund will consist
580 of cash or securities acceptable to the Trustee.

581 Section 6. Trustee Management. The Trustee will invest and reinvest the principal and income of
582 the Fund and keep the Fund invested as a single fund, without distinction between principal and
583 income, in accordance with investment guidelines and objectives communicated in writing to the
584 Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In
585 investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other
586 fiduciary will discharge his duties with respect to the trust fund solely in the interest of the
587 beneficiary and with the care, skill, prudence, and diligence under the circumstances then
588 prevailing which persons of prudence, acting in a like capacity and familiar with such matters,
589 would use in the conduct of any enterprise of a like character and with like aims; except that:

590 A. Securities or other obligations of the Grantor, or any other owner of the project, or any of
591 their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-
592 2(a), will not be acquired or held, unless they are securities or other obligations of the federal or
593 a state government;

594 B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to
595 the extent insured by an agency of the federal or state government; and

596 C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a
597 reasonable time and without liability for the payment of interest thereon.

598 Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

599 A. To transfer from time to time any or all of the assets of the Fund to any common,
600 commingled or collective trust fund created by the Trustee in which the Fund is eligible to
601 participate subject to all of the provisions thereof, to be commingled with the assets of other trusts
602 participating herein. To the extent of the equitable share of the Fund in any such commingled
603 trust, such commingled trust will be part of the Fund; and

604 B. To purchase shares in any investment company registered under the Investment Company
605 Act of 1940, 15 USC § 80a-1 et seq., or one which may be created, managed, underwritten, or to
606 which investment advice is rendered or the shares of which are sold by the Trustee. The Trustees
607 may vote such shares in its discretion.

608 Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions
609 conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is
610 expressly authorized and empowered:

611 A. To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by
612 private contract or at public auction. No person dealing with the Trustee will be bound to see to
613 the application of the purchase money or to inquire into the validity or expediency of any such
614 sale or other dispositions;

615 B. To make, execute, acknowledge and deliver any and all documents of transfer and
616 conveyance and any and all other instruments that may be necessary or appropriate to carry out
617 the powers herein granted;

618 C. To register any securities held in the fund in its own name or in the name of a nominee and
619 to hold any security in bearer form or in book entry, or to combine certificates representing such
620 securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or
621 to deposit or arrange for the deposit of such securities in a qualified central depository even
622 though, when so deposited, such securities may be merged and held in bulk in the name of the
623 nominee of such depository with other securities deposited therein by another person, or to
624 deposit or arrange for the deposit of any securities issued by the United States government, or
625 any agency or instrumentality thereof with a Federal Reserve Bank, but the books and records of
626 the Trustee will at all times show that all such securities are part of the Fund;

627 D. To deposit any cash in the fund in interest-bearing accounts maintained or savings
628 certificates issued by the Trustee, in its separate corporate capacity, or in any other banking
629 institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State
630 government; and

631 E. To compromise or otherwise adjust all claims in favor of or against the Fund.

632 Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or
633 in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the
634 Fund. All other expenses incurred by the Trustee in connection with the administration of this
635 Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee
636 to the extent not paid directly by the Grantor, and all other proper charges and disbursements of
637 the Trustee will be paid from the Fund.

638 Section 10. Annual Valuation. The Trustee will annually, at the end of the month coincident with
639 or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the
640 director of the Department of Environmental Quality, Commonwealth of Virginia, a statement
641 confirming the value of the Trust. Any securities in the Fund will be valued at market value as of
642 no more than 30 days prior to the date of the statement. The failure of the Grantor to object in
643 writing to the Trustee within 90 days after the statement has been furnished to the Grantor and
644 the director of the Department of Environmental Quality, Commonwealth of Virginia will constitute
645 a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or
646 liability against the Trustee with respect to matters disclosed in the statement.

647 Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may
648 be counsel to the Grantor, with respect to any question arising as to the construction of this
649 Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent
650 permitted by law, in acting upon the advice of counsel.

651 Section 12. Trustee Compensation. The Trustee will be entitled to reasonable compensation for
652 its services as agreed upon in writing from time to time with the Grantor.

653 Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee,
654 but such resignation or replacement shall not be effective until the Grantor has appointed a
655 successor trustee and this successor accepts the appointment. The successor trustee shall have
656 the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance
657 of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the
658 successor trustee the funds and properties then constituting the Fund. If for any reason the grantor
659 cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a

660 court of competent jurisdiction for the appointment of a successor trustee or for instructions. The
661 successor trustee and the date on which he assumes administration of the trust will be specified
662 in writing and sent to the Grantor, the director of the Department of Environmental Quality,
663 Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change
664 becomes effective. Any expenses incurred by the Trustee as a result of any of the acts
665 contemplated by this section will be paid as provided in Section 9.

666 Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the
667 Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or
668 such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee will
669 be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and
670 instructions. All orders, requests, and instructions by the Director of the Department of
671 Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the
672 Director and the Trustee will act and will be fully protected in acting in accordance with such
673 orders, requests and instructions. The Trustee will have the right to assume, in the absence of
674 written notice to the contrary, that no event constituting a change or a termination of the authority
675 of any person to act on behalf of the Grantor or the Commonwealth of Virginia's Department of
676 Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the
677 absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of
678 Virginia's Department of Environmental Quality, except as provided for herein.

679 Section 15. Notice of Nonpayment. The Trustee will notify the Grantor and the Director of the
680 Department of Environmental Quality, Commonwealth of Virginia, by certified mail within 10 days
681 following the expiration of the 30-day period after the anniversary of the establishment of the
682 Trust, if no payment is received from the Grantor during that period. After the pay-in period is
683 completed, the Trustee is not required to send a notice of nonpayment.

684 Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in
685 writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental
686 Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of
687 Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

688 Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this
689 Agreement as provided in Section 16, this Trust will be irrevocable and will continue until
690 terminated at the written agreement of the Grantor, the Trustee, and the Director of the
691 Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the
692 Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property,
693 less final trust administration expenses, will be delivered to the Grantor.

694 Section 18. Immunity and Indemnification. The Trustee will not incur personal liability of any
695 nature in connection with any act or omission, made in good faith, in the administration of this
696 Trust, or in carrying out any directions by the Grantor or the Director of the Department of
697 Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement.
698 The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or
699 both, from and against any personal liability to which the Trustee may be subjected by reason of
700 any act or conduct in its official capacity, including all expenses reasonably incurred in its defense
701 in the event the Grantor fails to provide such defense.

702 Section 19. Choice of Law. This Agreement will be administered, construed and enforced
703 according to the laws of the Commonwealth of Virginia.

704 Section 20. Interpretation. As used in the Agreement, words in the singular include the plural and
705 words in the plural include the singular. The descriptive headings for each section of this
706 Agreement will not affect the interpretation of the legal efficacy of this Agreement.

707 In witness whereof the parties have caused this Agreement to be executed by their respective
708 officers duly authorized and their corporate seals to be hereunto affixed and attested as of the

709 date first above written. The parties below certify that the wording of this Agreement is
 710 substantively identical to the wording specified in 9VAC25-900-350 B, as such regulations were
 711 constituted on the date shown immediately below.

(Signature of Grantor)	
By: (Title)	(Date)
Attest:	
(Title)	(Date)
(Seal)	
(Signature of Trustee)	
By	
Attest:	
(Title)	(Date)
(Seal)	

712 Certification of Acknowledgment:
 713 COMMONWEALTH OF VIRGINIA
 714 STATE OF _____
 715 CITY/COUNTY OF _____

716 On this date, before me personally came (owner) to me known, who being by me duly sworn, did
 717 depose and say that she/he resides at (address), that she/he is (title) of (corporation), the
 718 corporation described in and which executed the above instrument; that she/he knows the seal of
 719 said corporation; that the seal affixed to such instrument is such corporate seal; that it was so
 720 affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name
 721 thereto by like order.

722 (Signature of Notary Public)

723 C. Wording of surety bond guaranteeing performance or payment.

724 (NOTE: Instructions in parentheses are to be replaced with the applicable information for the
 725 nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration)
 726 and the non-relevant information and parentheses deleted.)

727 PERFORMANCE OR PAYMENT BOND

728 Date bond executed: _____

729 Effective date: _____

730 Principal: (legal name and business address) _____

731 Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")
 732 _____

733 State of incorporation: _____

734 Surety: (name and business address) _____

735 Name, address, and cost estimate or estimates for the project: _____

736 Penal sum of bond: \$ _____

737 Surety's bond number: _____

738 Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the
739 Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the
740 Department) in the above penal sum for the payment of which we bind ourselves, our heirs,
741 executors, administrators, successors and assigns, jointly and severally; provided that, where the
742 Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum
743 "jointly and severally" only for the purpose of allowing a joint action or actions against any or all
744 of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal,
745 for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit
746 of liability is indicated, the limit of liability shall be the full amount of the penal sum.

747 Whereas, said Principal is required to have from the Department of Environmental Quality,
748 Commonwealth of Virginia, in order to own or operate the, nutrient credit-generating project
749 identified above, and

750 Whereas, said Principal is required to provide financial assurance for (operation and maintenance
751 and/or repair or replacement for the project's structural BMPs) (monitoring and/or long-term
752 maintenance for the project's wetland/stream restoration) of the project as a condition of an order
753 issued by the department,

754 Now, therefore the conditions of this obligation are such that if the Principal shall faithfully perform
755 (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring
756 wetland/stream restoration), whenever required to do so, of the project identified above in
757 accordance with the order or the (operation and maintenance and/or repair or replacement of
758 structural BMPs) (monitoring wetland/stream restoration) submitted to receive and other
759 requirements of as such plan and may be amended or renewed pursuant to all applicable laws,
760 statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

761 Or, if the Principal shall faithfully perform (operation and maintenance and/or repair or
762 replacement of structural BMPs) (monitoring wetland/stream restoration) following an order to
763 begin (operation and maintenance and/or repair or replacement of structural BMPs) (monitoring
764 wetland/stream restoration) issued by the Commonwealth of Virginia's Department of
765 Environmental Quality or by a court, or following a notice of termination of the permit,

766 Or, if the Principal shall provide alternate financial assurance as specified in the Department's
767 regulations and obtain the director's written approval of such assurance, within 90 days of the
768 date notice of cancellation is received by the Director of the Department of Environmental Quality
769 from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and
770 effect for the life of the nutrient credit-generating project identified above.

771 The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill
772 the conditions described above. Upon notification by the Director of the Department of
773 Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation
774 of the requirements of the Department's regulations, the Surety must either perform (operation
775 and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream
776 restoration) in accordance with the approved plan and other requirements or forfeit the (operation
777 and maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream
778 restoration) amount guaranteed for the nutrient credit-generating project to the Commonwealth of
779 Virginia.

780 Upon notification by the Director of the Department of Environmental Quality, Commonwealth of
781 Virginia, that the Principal has been found in violation of an order to begin operation and
782 maintenance and/or replacement) the Surety must either perform (operation and maintenance
783 and/or repair or replacement of structural BMPs) (monitoring wetland/stream restoration) in
784 accordance with the order or forfeit the amount of the (operation and maintenance and/or repair
785 or replacement of structural BMPs) (monitoring wetland/stream restoration) guaranteed for the
786 nutrient credit-generating project to the Commonwealth of Virginia.

787 The Surety hereby waives notification of amendments to the operation and maintenance and/or
 788 replacement, orders, applicable laws, statutes, rules, and regulations and agrees that such
 789 amendments shall in no way alleviate its obligation on this bond.

790 For purposes of this bond, (operation and maintenance and/or repair or replacement of structural
 791 BMPs) (monitoring wetland/stream restoration) shall be deemed to have been completed when
 792 the Director of the Department of Environmental Quality, Commonwealth of Virginia, determines
 793 that the conditions of the approved plan have been met.

794 The liability of the Surety shall not be discharged by any payment or succession of payments
 795 hereunder, unless and until such payment or payments shall amount in the aggregate to the penal
 796 sum of the bond, but the obligation of the Surety hereunder shall not exceed the amount of said
 797 penal sum unless the Director of the Department of Environmental Quality, Commonwealth of
 798 Virginia, should prevail in an action to enforce the terms of this bond. In this event, the Surety
 799 shall pay, in addition to the penal sum due under the terms of the bond, all interest accrued from
 800 the date the Director of the Department of Environmental Quality, Commonwealth of Virginia, first
 801 ordered the Surety to perform. The accrued interest shall be calculated at the judgment rate of
 802 interest pursuant to § 6.2-302 of the Code of Virginia.

803 The Surety may cancel the bond by sending written notice of cancellation to the owner and to the
 804 Director of the Department of Environmental Quality, Commonwealth of Virginia, provided,
 805 however, that cancellation cannot occur (1) during the 120 days beginning on the date of receipt
 806 of the notice of cancellation by the director as shown on the signed return receipt; or (2) while an
 807 enforcement action is pending.

808 The Principal may terminate this bond by sending written notice to the Surety, provided, however,
 809 that no such notice shall become effective until the Surety receives written authorization for
 810 termination of the bond by the Director of the Department of Environmental Quality,
 811 Commonwealth of Virginia.

812 In witness whereof, the Principal and Surety have executed this Performance Bond and have
 813 affixed their seals on the date set forth above.

814 The persons whose signatures appear below hereby certify that they are authorized to execute
 815 this surety bond on behalf of the Principal and Surety and I hereby certify that the wording of this
 816 surety bond is substantively identical to the wording specified in 9VAC25-900-350 C as such
 817 regulations were constituted on the date shown immediately below.

818 Principal

819 Signature(s): _____

820 Name(s) and Title(s): (typed) _____

821 Corporate Surety

822 Name and Address: _____

823 State of Incorporation: _____

824 Liability Limit: \$ _____

825 Signature(s): _____

826 Name(s) and Title(s): (typed) _____

827 Corporate Seal:

828 D. Wording of irrevocable standby letter of credit.

829 (NOTE: Instructions in parentheses are to be replaced with the applicable information for the
 830 nutrient credit-generating project's practices (i.e., structural BMPs or wetland/stream restoration)
 831 and the non-relevant information and parentheses deleted.)

832 IRREVOCABLE STANDBY LETTER OF CREDIT

833 Director
834 Department of Environmental Quality
835 P.O. Box 1105
836 Richmond, Virginia 23218

837 Dear (Sir or Madam):

838 We hereby establish our Irrevocable Letter of Credit No..... in your favor at the request and for
839 the account of (owner's name and address) up to the aggregate amount of (in words) U.S. dollars
840 \$____, available upon presentation of

- 841 1. Your sight draft, bearing reference to this letter of credit No _____ together with
- 842 2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations
- 843 issued under the authority of the Department of Environmental Quality, Commonwealth of
- 844 Virginia.

845 The following amounts are included in the amount of this letter of credit: (Insert the nutrient credit-
846 generating project name and address, and the appropriate cost estimate or estimates, or portions
847 thereof, for which financial assurance is demonstrated by this letter of credit.)

848 This letter of credit is effective as of (date) and will expire on (date at least one year later), but
849 such expiration date will be automatically extended for a period of (at least one year) on (date)
850 and on each successive expiration date, unless, at least 120 days before the current expiration
851 date, we notify you and (owner or operator's name) by certified mail that we decide not to extend
852 the Letter of Credit beyond the current expiration date. In the event you are so notified, unused
853 portion of the credit will be available upon presentation of your sight draft for 120 days after the
854 date of receipt by you as shown on the signed return receipt or while a compliance procedure is
855 pending, whichever is later.

856 Whenever this letter of credit is drawn on under and in compliance with the terms of this credit,
857 we will duly honor such draft upon presentation to us, and we will pay to you the amount of the
858 draft promptly and directly.

859 I hereby certify that I am authorized to execute this letter of credit on behalf of (issuing institution)
860 and I hereby certify that the wording of this letter of credit is substantively identical to the wording
861 specified in 9VAC25-900-350 D as such regulations were constituted on the date shown
862 immediately below.

863 Attest:

864 (Print name and title of official of issuing institution) (Date)

(Signature)

(Date)

865 This credit is subject to the most recent edition of the Uniform Customs and Practice for
866 Documentary Credits, International Chamber of Commerce Publication No. 600, and any
867 subsequent revisions thereof approved by a congress of the International Chamber of Commerce
868 and adhered to by us. If this credit expires during an interruption of business as described in
869 Article 36 of said Publication 600, the bank hereby specifically agrees to effect payment if this
870 credit is drawn against within thirty (30) days after resumption of our business.

871 E. Assignment of certificate of deposit account.

872 City _____, 20____

873 FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia
874 Department of Environmental Quality, Commonwealth of Virginia, and its successors and assigns
875 the Virginia Department of Environmental Quality the principal amount of the instrument, including
876 all moneys deposited now or in the future to that instrument, indicated below:

877 This assignment includes all interest now and hereafter accrued.

878 Certificate of Deposit Account No. _____

879 This assignment is given as security to the Virginia Department of Environmental Quality in the
880 amount of _____ Dollars (\$ _____).

881 Continuing Assignment. This assignment shall continue to remain in effect for all subsequent
882 terms of the automatically renewable certificate of deposit.

883 Assignment of Document. The undersigned also assigns any certificate or other document
884 evidencing ownership to the Virginia Department of Environmental Quality.

885 Additional Security. This assignment shall secure the payment of any financial obligation of the
886 (name of owner) to the Virginia Department of Environmental Quality for (operation and
887 maintenance and/or repair or replacement of structural BMPs) (monitoring wetland/stream
888 restoration) at the (project name) located (physical address).

889 Application of Funds. The undersigned agrees that all or any part of the funds of the indicated
890 account or instrument may be applied to the payment of any and all financial assurance
891 obligations of (name of owner) to the Virginia Department of Environmental Quality for (operation
892 and maintenance and/or repair or replacement) (monitoring) at the (project name and address).
893 The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any
894 principal amount on deposit in the indicated account or instrument including any interest, if
895 indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund
896 (operation and maintenance and/or repair or replacement) (monitoring) at the (project name) or
897 in the event of (owner) failure to comply with the 9VAC25-900. The undersigned agrees that the
898 Virginia Department of Environmental Quality may withdraw any principal and/or interest from the
899 indicated account or instrument without demand or notice. (The undersigned) agrees to assume
900 any and all loss of penalty due to federal regulations concerning the early withdrawal of funds.
901 Any partial withdrawal of principal or interest shall not release this assignment.

902 The party or parties to this Assignment set their hand or seals, or if corporate, has caused this
903 assignment to be signed in its corporate name by its duly authorized officers and its seal to be
904 affixed by authority of its Board of Directors the day and year above written.

(Owner)	SEAL
(print owner's name)	
(Owner)	SEAL
(print owner's name)	

905 THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

906 The signature(s) as shown above compare correctly with the name(s) as shown on record as
907 owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly
908 recorded by placing a hold in the amount of \$ _____ for the benefit of the
909 Department of Environmental Quality.

910 The accrued interest on the Certificate of Deposit indicated above shall be maintained to capitalize
911 versus being mailed by check or transferred to a deposit account.

(Signature)	(Date)
(print name)	

(Title)

912 F. Wording of insurance endorsement.

913 ENDORSEMENT.

914 (NOTE: Instructions in parentheses are to be replaced with the applicable information for the
915 nutrient credit-generating project's practices (i.e., structural BMPs or restoration) and the non-
916 relevant information and parentheses deleted.)

917 Name: (name of each covered location)

918 Address: (address of each covered location)

919 Policy number:

920 Period of coverage: (current policy period)

921 Name of Insurer:

922 Address of Insurer:

923 Name of insured:

924 Address of insured:

925 Endorsement:

926 1. This endorsement certifies that the policy to which the endorsement is attached
927 provides insurance covering the (operation and maintenance and/or repair or replacement
928 of the nutrient credit-generating project's structural BMPs) (monitoring of the nutrient
929 credit-generating project's wetland/stream restoration) in connection with the insured's
930 obligation to demonstrate financial responsibility under the 9VAC25-900).

931 (List the name(s) and address(es) of the nutrient credit-generating project(s)) for (the
932 operation and maintenance and/or repair or replacement of the nutrient credit-generating
933 project's structural BMPs) (monitoring of the nutrient credit-generating project's
934 wetland/stream restoration) in accordance with and subject to the limits of liability,
935 exclusions, conditions, and other terms of the policy;

936 The limits of liability are (provide the dollar amount of the operation and maintenance,
937 monitoring, and/or repair or replacement), exclusive of legal defense costs, which, if
938 applicable, are subject to a separate limit under the policy. This coverage is provided under
939 (provide the policy number). The effective date of said policy is (insert the effective date).

940 2. The insurance afforded with respect to such occurrences is subject to all of the terms
941 and conditions of the policy; provided, however, that any provisions inconsistent with
942 subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made
943 policies of this paragraph 2 are hereby amended to conform with subsections (a) through
944 (e):

945 a. Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations
946 under the policy to which this endorsement is attached.

947 b. The insurer is liable for the payment of amounts within any deductible applicable to
948 the policy to the provider of monitoring, operation and maintenance and/or repair or
949 replacement, with a right of reimbursement by the insured for any such payment made
950 by the insurer. This provision does not apply with respect to that amount of any
951 deductible for which coverage is demonstrated under another mechanism or
952 combination of mechanisms as specified in 9VAC25-900.

953 c. Whenever requested by the State Water Control Board Department of
954 Environmental Quality, Commonwealth of Virginia, the insurer agrees to furnish to
955 State Water Control Board the Department of Environmental Quality, Commonwealth
956 of Virginia, a signed duplicate original of the policy and all endorsements.

957 d. The insurer may not cancel or terminate the policy during the policy period except
958 for failure to pay the premium. The policy shall automatically renew at the department's
959 discretion on an annual basis for a period of up to ten years. The automatic renewal
960 of the policy shall, at a minimum, provide the insured with the option of renewal at the
961 face amount of the expiring policy.

962 e. The insured may cancel the insurance policy only if alternate financial assurance is
963 substituted as specified in 9VAC25-900, or if the owner is no longer required to
964 demonstrate financial responsibility in accordance with 9VAC25-900.

965 f. Cancellation for nonpayment of premium or misrepresentation by the insured will be
966 effective only upon written notice and only after expiration of a minimum of 120 days
967 after a copy of such written notice is received by the insured and the ~~State Water~~
968 ~~Control Board~~ Department of Environmental Quality, Commonwealth of Virginia.

969 (Insert for claims made policies:)

970 g. The insurance covers claims otherwise covered by the policy that are reported to
971 the insurer within six months of the effective date of cancellation or nonrenewal of the
972 policy except where the new or renewed policy has the same retroactive date or a
973 retroactive date earlier than that of the prior policy, and which arise out of any covered
974 occurrence that commenced after the policy retroactive date, if applicable, and prior to
975 such policy renewal or termination date. Claims reported during such extended
976 reporting period are subject to the terms, conditions, limits, including limits of liability,
977 and exclusions of the policy.

978 I hereby certify that the wording of this endorsement is in no respect less favorable than the
979 coverage specified in 9VAC25-900. I further certify that the insurer is licensed to transact the
980 business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the
981 Commonwealth of Virginia.

982 (Signature of authorized representative of insurer)

983 (Name of the person signing)

984 (Title of the person signing), authorized representative of (name of the insurer)

985 (Address of the representative)

986 (Title of person signing)

987 Signature of witness or notary:

988 (Date)



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-900
VAC Chapter title(s)	Certification of Nonpoint Source Nutrient Credits
Action title	Revisions to CH 900 in response to SB 657 and SB 187 and SB 188 (2022 GA session)
Final agency action date	June 22, 2022
Date this document prepared	May 17, 2022

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulation is required to conform the existing regulation to changes directed by Chapter 356 of the 2022 Acts of Assembly (SB 657) and Chapter 526 of the 2022 Acts of Assembly (SB 187) and Chapter 422 of the 2022 Acts of Assembly (SB 188).

Senate Bill (SB) 657 limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations and transfers the Board's existing authority to issue permits and orders to the Department of Environmental This final regulatory action will amend this State Water Control Board regulation to incorporate changes made by Chapter 356 (SB 657) of the 2022 Acts of Assembly of the General Assembly.

Senate Bill 188 authorizes the Department of Environmental Quality to allow the use of third-party long-term stewards to hold and manage the long-term management fund to maintain stream restoration projects.

Senate Bill 187 allows the Department of Environmental Quality to accelerate the release of nutrient credits generated by a stream restoration project based on (i) a determination that the level of risk is low, (ii) the provision of additional financial assurance, and (iii) the experience of the applicant.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

SB 657 and SB 187 and SB 188 were passed during the 2022 Session of the General Assembly.

This regulatory action is required to conform the existing regulation to changes in Code.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Water Control Board adopted these amendments to 9VAC25-900 on June 22, 2022 as a final regulation and affirmed that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

VIRGINIA ACTS OF ASSEMBLY – 2022 SESSION

CHAPTER 526

An Act to amend and reenact § 62.1-44.19:20 of the Code of Virginia, relating to accelerated stream nutrient credit release.

[S 187]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:20 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.19:20. Nutrient credit certification.

A. The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits.

B. Regulations adopted pursuant to this section shall:

1. Establish procedures for the certification and registration of credits, including:

a. Certifying credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;

b. Certifying credits that may be generated from agricultural and urban stormwater best management practices, use or management of manures, managed turf, land use conversion, stream or wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal, as appropriate;

c. Establishing a process and standards for wetland or stream credits to be converted to nutrient credits. Such process and standards shall only apply to wetland or stream credits that were established after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be used for both wetland or stream credit and nutrient credit purposes;

d. Certifying credits from multiple practices that are bundled as a package by the applicant;

e. Prohibiting the certification of credits generated from activities funded by federal or state water quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels may be achieved through the use of such grants;

f. Establishing a timely and efficient certification process including application requirements, a reasonable application fee schedule not to exceed \$10,000 per application, and review and approval procedures;

g. Requiring public notification of a proposed nutrient credit-generating entity; and

h. Establishing a timeline for the consideration of certification applications for land conversion projects. The timeline shall provide that within 30 days of receipt of an application the Department shall, if warranted, conduct a site visit and that within 45 days of receipt of an application the Department shall either determine that the application is complete or request additional specific information from the applicant. A determination that an application for a land conversion project is complete shall not require the Department to issue the certification. The Department shall deny, approve, or approve with conditions an application within 15 days of the Department's determination that the application is complete. When the request for credit release is made concurrently with the application for a land conversion project certification, the concurrent release shall be processed on the same timeline. When the request for credit release is from a previously approved land conversion project, the Department shall schedule a site visit, if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release within 15 days of the site visit or determination that a site visit is not warranted. The timelines set out in this subdivision shall be implemented prior to adoption of regulations. The Department shall release credits from a land conversion project after it is satisfied that the applicant has met the criteria for release in an approved nutrient reduction implementation plan.

2. Establish credit calculation procedures for proposed credit-generating practices, including the determination of:

a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

b. Baselines established for agricultural practices, which shall be those actions necessary to achieve a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs as implemented on the tract, field, or other land area under consideration;

c. Baselines for urban practices from new development and redevelopment, which shall be in compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management Program regulations. Baselines for all other existing development shall be at a level necessary to achieve the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs applicable to that land use;

e. Baselines for other nonpoint source credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best available scientific and technical information;

f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed a credit-generating practice that involves land use conversion, which shall represent controls beyond those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice shall represent controls beyond those in place at the time of TMDL approval;

g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

h. Credit quantities, which shall be established using the best available scientific and technical information at the time of certification;

3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term of no less than 12 months;

4. Establish requirements to reasonably assure the generation of the credit depending on the nature of the credit-generating activity and use, such as legal instruments for perpetual credits, operation and maintenance requirements, and associated financial assurance requirements. Financial assurance requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a point source permitted under this article, its existing tax or rate authority. *Notwithstanding any release schedule set out in regulations of the Board, the Department may accelerate the release of a maximum of 50 percent of nutrient credits from a stream restoration project based on (i) a determination that the level of risk for restoration failure is low, (ii) the provision of additional financial assurance in an amount adequate to cover the cost of project repair or replacement in the event of failure, and (iii) the experience of the applicant or the applicant's agents who will implement the stream restoration project;*

5. Establish appropriate reporting requirements;

6. Provide for the ability of the Department to inspect or audit for compliance with the requirements of such regulations;

7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements;

8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently retired at the time of certification pursuant to this section for the purposes of offsetting growth in unregulated nutrient loads; and

9. Establish such other requirements as the Board deems necessary and appropriate.

C. Prior to the adoption of such regulations, the Board shall certify (i) credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available scientific and technical information and (ii) credits that are located in tributaries outside of the Chesapeake Bay watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal rates for each practice identified in Appendix A of the Department's document "Trading Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners."

D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of credits as follows:

1. The registry shall include all nonpoint source credits certified pursuant to this article and may include point source nitrogen and point source phosphorus credits generated from point sources covered by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified pursuant to this section at the option of the owner. No other credits shall be valid for compliance purposes.

2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such credits from transferring the credits on such commercial terms as may be established by and between the owner and the regulated or unregulated party acquiring the credits.

3. The Department shall establish procedures for the listing and tracking of credits on the registry, including but not limited to (i) notification of the availability of new nutrient credits to the locality

where the credit-generating practice is implemented at least five business days prior to listing on the registry to provide the locality an opportunity to acquire such credits at fair market value for compliance purposes and (ii) notification that the listing of credits on the registry does not constitute a representation by the Board or the owner that the credits will satisfy the specific regulatory requirements applicable to the prospective user's intended use and that the prospective user is encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the intended use.

4. The registry shall be publicly accessible without charge.

E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply with the provisions of this section shall be subject to the enforcement and penalty provisions of § 62.1-44.19:22.

F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012, shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the other provisions of this article, including registration, inspection, reporting, and enforcement.

2. That the provisions of this act shall become effective 30 days after the Department of Environmental Quality issues guidance regarding the implementation of this act.

VIRGINIA ACTS OF ASSEMBLY – 2022 SESSION

CHAPTER 422

An Act to amend and reenact § 62.1-44.19:20 of the Code of Virginia, relating to nutrient credit stream restoration projects; use of third-party long-term stewards.

Approved April 11, 2022

[S 188]

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:20 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.19:20. Nutrient credit certification.

- A. The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits.
- B. Regulations adopted pursuant to this section shall:
1. Establish procedures for the certification and registration of credits, including:
 - a. Certifying credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;
 - b. Certifying credits that may be generated from agricultural and urban stormwater best management practices, use or management of manures, managed turf, land use conversion, stream or wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal, as appropriate;
 - c. Establishing a process and standards for wetland or stream credits to be converted to nutrient credits. Such process and standards shall only apply to wetland or stream credits that were established after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be used for both wetland or stream credit and nutrient credit purposes;
 - d. Certifying credits from multiple practices that are bundled as a package by the applicant;
 - e. Prohibiting the certification of credits generated from activities funded by federal or state water quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels may be achieved through the use of such grants;
 - f. Establishing a timely and efficient certification process including application requirements, a reasonable application fee schedule not to exceed \$10,000 per application, and review and approval procedures;
 - g. Requiring public notification of a proposed nutrient credit-generating entity; and
 - h. Establishing a timeline for the consideration of certification applications for land conversion projects. The timeline shall provide that within 30 days of receipt of an application the Department shall, if warranted, conduct a site visit and that within 45 days of receipt of an application the Department shall either determine that the application is complete or request additional specific information from the applicant. A determination that an application for a land conversion project is complete shall not require the Department to issue the certification. The Department shall deny, approve, or approve with conditions an application within 15 days of the Department's determination that the application is complete. When the request for credit release is made concurrently with the application for a land conversion project certification, the concurrent release shall be processed on the same timeline. When the request for credit release is from a previously approved land conversion project, the Department shall schedule a site visit, if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release within 15 days of the site visit or determination that a site visit is not warranted. The timelines set out in this subdivision shall be implemented prior to adoption of regulations. The Department shall release credits from a land conversion project after it is satisfied that the applicant has met the criteria for release in an approved nutrient reduction implementation plan.
 2. Establish credit calculation procedures for proposed credit-generating practices, including the determination of:
 - a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;
 - b. Baselines established for agricultural practices, which shall be those actions necessary to achieve a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs as implemented on the tract, field, or other land area under consideration;

c. Baselines for urban practices from new development and redevelopment, which shall be in compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management Program regulations. Baselines for all other existing development shall be at a level necessary to achieve the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs applicable to that land use;

e. Baselines for other nonpoint source credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best available scientific and technical information;

f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed a credit-generating practice that involves land use conversion, which shall represent controls beyond those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice shall represent controls beyond those in place at the time of TMDL approval;

g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

h. Credit quantities, which shall be established using the best available scientific and technical information at the time of certification;

3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term of no less than 12 months;

4. Establish requirements to reasonably assure the generation of the credit depending on the nature of the credit-generating activity and use, such as legal instruments for perpetual credits, operation and maintenance requirements, and associated financial assurance requirements. Financial assurance requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a point source permitted under this article, its existing tax or rate authority. *In lieu of long-term management fund financial assurance mechanisms established or required by regulation for projects generating credits from stream restoration, a third-party long-term steward approved by the Department, such as a public agency, nongovernmental organization or private land manager, may hold long-term management funds in a separate interest-bearing account to be used only for the long-term management of the stream restoration project;*

5. Establish appropriate reporting requirements;

6. Provide for the ability of the Department to inspect or audit for compliance with the requirements of such regulations;

7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements;

8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently retired at the time of certification pursuant to this section for the purposes of offsetting growth in unregulated nutrient loads; and

9. Establish such other requirements as the Board deems necessary and appropriate.

C. Prior to the adoption of such regulations, the Board shall certify (i) credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available scientific and technical information and (ii) credits that are located in tributaries outside of the Chesapeake Bay watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal rates for each practice identified in Appendix A of the Department's document "Trading Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners."

D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of credits as follows:

1. The registry shall include all nonpoint source credits certified pursuant to this article and may include point source nitrogen and point source phosphorus credits generated from point sources covered by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified pursuant to this section at the option of the owner. No other credits shall be valid for compliance purposes.

2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such credits from transferring the credits on such commercial terms as may be established by and between the owner and the regulated or unregulated party acquiring the credits.

3. The Department shall establish procedures for the listing and tracking of credits on the registry, including but not limited to (i) notification of the availability of new nutrient credits to the locality

where the credit-generating practice is implemented at least five business days prior to listing on the registry to provide the locality an opportunity to acquire such credits at fair market value for compliance purposes and (ii) notification that the listing of credits on the registry does not constitute a representation by the Board or the owner that the credits will satisfy the specific regulatory requirements applicable to the prospective user's intended use and that the prospective user is encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the intended use.

4. The registry shall be publicly accessible without charge.

E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply with the provisions of this section shall be subject to the enforcement and penalty provisions of § 62.1-44.19:22.

F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012, shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the other provisions of this article, including registration, inspection, reporting, and enforcement.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: Members of the State Water Control Board,

FROM: Jutta Schneider, Director, Water Planning Division *Jutta Schneider*

DATE: May 19, 2022

SUBJECT: Final General Permit Regulation for Use of Irrigation Withdrawals from the Surficial Aquifer Greater than 300,000 Gallons in any One Month (9VAC25-920)

At the June 22, 2022 meeting of the State Water Control Board (Board), the Board will consider the approval of a final General Permit Regulation for Use of Irrigation Withdrawals from the Surficial Aquifer Greater than 300,000 Gallons in any One Month (9VAC25-920). There is significant non-potable groundwater use from the confined aquifer system for non-agricultural irrigation purposes, such as golf courses and community green space. Increasing the use of the surficial aquifer or water table aquifer for non-potable non-agricultural irrigation achieves greater long-term confined aquifer sustainability. This regulatory proposal will create a new general permit to promote use of the surficial aquifer for non-agricultural withdrawal in any Ground Water Management Area and to streamline the permitting process for those groundwater withdrawals that use the surficial aquifer by providing them a general permit option. This memorandum provides a brief background on the groundwater management program and the General Assembly action authorizing this regulatory action (SB673, Chapter 670 of the 2020 Acts of Assembly), and summarizes the final regulatory action.

BACKGROUND

The groundwater management program was established in 1973 pursuant to the Groundwater Act of 1973. The first groundwater management area was designated in 1975 as the Southeastern Virginia Groundwater Management Area. The State Water Control Board designated Accomack and Northampton Counties as the Eastern Shore Ground Water Management Area in 1978. The Ground Water Management Act of 1992 (§§ 62.1-254 et seq. of the Code of Virginia) replaced the

Groundwater Act of 1973. The current statute requires permits for the withdrawal of 300,000 gallons or more of groundwater in a month in a groundwater management area.

The statute and the regulation do not establish a predetermined aquifer priority for specific end uses of groundwater. In practice, DEQ utilizes a first come first serve approach and does not require the use of specific aquifers unless the aquifer requested by the applicant is fully allocated.

During the 2020 Session of the General Assembly, SB673 (Chapter 670 of the 2020 Acts of Assembly) was passed. It amended the statute, adding new §§62.1-258.1, 62.1-266 H and I, directing the Board to address the impacts of the non-agricultural irrigation on the confined aquifer system by prospectively prohibiting the use of these aquifers unless the quality and quantity of the surficial aquifer is insufficient for the proposed beneficial use. The statute says that the regulations shall require the Department, within 30 days of receipt of a complete request, to make a determination as to the adequacy of the quantity or quality of the ground water in a surficial aquifer for the proposed use.

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

REGULATORY PROCESS

The Notice of Intended Regulatory Action was published on November 23, 2020. The public comment period was open from November 23, 2020 through December 23, 2020. DEQ received two comments during the comment period. Only one of the comments related to participating on the Technical Advisory Committee (TAC). The Director appointed a TAC and the membership list is included as Attachment A. The TAC met five times, after the pandemic state of emergency was declared, and all five meetings were virtual. The TAC completed its work on June 22, 2021.

The Board authorized the Director to initiate a public comment period and schedule a public hearing for Proposed General Permit for Use of the Surficial Aquifer in a Groundwater Management Area (9VAC25-920) during its December 14, 2021 meeting.

The Virginia Registrar published the draft regulations in The Virginia Register of Regulations on February 14, 2022. The public comment period ran from February 14, 2022 through April 15, 2022.

PUBLIC COMMENT

Staff received two public comments through the Town Hall, with both in support of the recommended adoption of the general permit. All comments and responses are provided in the Agency Background Document (Attachment B). Two public hearings were held – March 8, 2022

at Eastern Shore Community College in Melfa and March 9, 2022 in New Kent. Each meeting was attended by one member of the public, but neither chose to speak during the public comment period of the hearings.

CHANGES SINCE PROPOSED STAGE

During the 2022 Session, SB 657 was passed. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations and transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. This final regulatory action will amend this State Water Control Board regulation to incorporate changes made by Chapter 356 (SB 657) of the 2022 Acts of Assembly of the General Assembly.

STAFF RECOMMENDATION

Staff recommend that the State Water Control Board adopt the General Permit Regulation for Use of Irrigation Withdrawals from the Surficial Aquifer Greater than 300,000 Gallons in any One Month 9VAC25-920. (Attachment C)

ATTACHMENTS

- A. Regulatory Technical Advisory Committee Roster
- B. Agency Background Document (TH-09)
- C. General Permit for Use of Irrigation Withdrawals from the Surficial Aquifer Greater than 300,000 Gallons in any One Month (9VAC25-920)

PRESENTER CONTACT INFORMATION

Name: Joseph Grist, Water Withdrawal Permitting and Compliance Manager

Phone: (804) 698-4031

Email: joseph.grist@deq.virginia.gov

Regulatory Technical Advisory Committee Roster-Chapter 920

**Brent Graham, Director of Golf Maintenance, Two Rivers Country Club, Williamsburg
(nominated by Virginia Golf Course Superintendents Association)**

Scott Vogell, Virginia Department of Health, Private Well Construction Program

Jason Eartly, Cardno, Groundwater Consultant

Martha Moore, Farm Bureau, Agriculture

Joe Nicholas, Legacy Park HOW (Hanover)

John O'Dell, VA Water Well Association

Sam Doak, VT Professor and Technical Advisory to the Virginia Turfgrass Council

Peggy Sanner, Chesapeake Bay Foundation

Project 6550 - Exempt Final**State Water Control Board****Creation of a General Permit for Use of the Surficial Aquifer in a Groundwater Management Area**

Chapter 920

General Permit for the Use of Irrigation Withdrawals from the Surficial Aquifer Greater Than 300,000 Gallons in any One Month**9VAC25-920-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in § 62.1-254 et seq. of the Code of Virginia (Ground Water Management Act of 1992) and 9VAC25-610 (Groundwater Withdrawal Regulation), except that for the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons that have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural irrigation" means irrigation that is used to support any operation devoted to bona fide production of crops, animals, or fowls, including the production of fruits and vegetables of any kinds; meat, dairy, and poultry products; nuts, tobacco, and floral products; and the production and harvest of products from silvicultural activity.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes domestic, including public water supply; agricultural; commercial; and industrial uses.

"Board" means the State Water Control Board. [However, when used outside the context of the promulgation of regulations, including regulations to establish general permits "Board" means the "Department of Environmental Quality".]

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

"Eastern Shore Groundwater Management Area" means the groundwater management area declared by the board encompassing the Counties of Accomack and Northampton.

"Eastern Virginia Groundwater Management Area" means the groundwater management area declared by the board encompassing the Counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and Stafford Counties east of Interstate 95; and the Cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"Groundwater management area" means a geographically defined groundwater area in which the board has deemed the levels, supply, or quality of groundwater to be adverse to public welfare, health, and safety.

"Irrigation" means the controlled application through man-made systems to supply water requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit, or coverage under a general permit, issued under the Ground Water Act of 1992.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Virginia Drought Evaluation Regions" means those drought evaluation regions encompassing the Counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and Stafford Counties east of Interstate 95; and the Cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

9VAC25-920-20. Information requirements.

Pursuant to 9VAC25-610-380, the [board department] may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's groundwater withdrawal; and (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a general permit coverage shall provide the information requested by the [board department] .

9VAC25-920-30. Purpose.

The purpose of this chapter is to establish a general permit for the use of irrigation water withdrawals from the surficial aquifer greater than 300,000 gallons in any one month under the provisions of 9VAC25-610. Applications for coverage under this general permit shall be processed for approval or denial by the [board department] . Coverage or application denial by the [board department] shall constitute the general permit action and shall follow all provisions in the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each general permit action is exempt.

9VAC25-920-40. [Delegation of authority (Repealed.)] .

[The director or an authorized representative may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.]

9VAC25-920-50. Effective date of the permit.

The general permit in 9VAC25-920-90 becomes effective on (insert the effective date of the regulation) and expires on (insert the date 15 years after effective date of the regulation). Any coverage that is granted pursuant to 9VAC25-920-90 shall remain in full force and effect until 11:59 p.m. on (insert the date 15 years after the effective date of the regulation) unless the general permit coverage is terminated or revoked on or before that date.

9VAC25-920-60. Authorization to withdrawal groundwater from the surficial aquifer of a groundwater management area.

A. A person granted coverage under this general permit may withdraw groundwater from the surficial aquifer of the Eastern Shore Groundwater Management Area or the Eastern Virginia Groundwater Management Area, as defined in this chapter, provided that:

1. The applicant submits an application in accordance with 9VAC25-920-90;
2. The applicant remits any required permit application fee;
3. The applicant receives general permit coverage from the Department of Environmental Quality under 9VAC25-920-100 and complies with the limitations and other requirements of the general permit, the general permit coverage letter, and the Ground Water Management Act of 1992 and attendant regulations; and
4. The applicant has not been required to obtain an individual permit under 9VAC25-610 for the proposed project withdrawals. Any applicant that is eligible for general permit coverage may, at the applicant's discretion, seek an individual permit instead of coverage under this general permit.

B. Application may be made at any time for an individual permit in accordance with 9VAC25-610.

C. Coverage under this general permit does not relieve the permittee of the responsibility to comply with other applicable federal, state, or local statutes, ordinances, or regulations.

D. The activity to withdraw water shall not have been prohibited by state law or regulations, nor shall it contravene applicable Groundwater Withdrawal Regulations (9VAC25-610).

E. Coverage under this general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-610-50.

9VAC25-920-70. Reasons to deny coverage.

A. The [board department] shall deny application for coverage under this general permit to:

1. An activity outside a groundwater management area.
2. An activity in an aquifer other than the surficial aquifer of a groundwater management area.
3. An activity that causes, may reasonably be expected to cause, or may contribute to causing more than minimal water level declines in the underlying confined aquifer system or degradation in water quality, stream or wetland hydrology, or other instream beneficial uses.

B. The [board department] may require an individual permit in accordance with 9VAC25-610-95 B rather than granting coverage under this general permit.

9VAC25-920-80. Exclusions.

A. It shall be unlawful on or after (insert the effective date of the regulation) for any person to construct a well for nonagricultural irrigation withdrawal purposes greater than 300,000 gallons in

any one month in a groundwater management area except in the surficial aquifer, unless the Department of Environmental Quality has determined the quantity or quality of the groundwater in the surficial aquifer, as provided in subsection B of this section, is not adequate to supply the proposed beneficial use.

B. Any person may construct a well for nonagricultural irrigation purposes in a groundwater management area outside of the surficial aquifer if any of the following criteria for the proposed location for surficial water withdrawal are documented to the satisfaction of the department:

1. That a ratio of greater than one surficial well per acre would be required to support the proposed beneficial use water withdrawal volume based on the yield test results from at a minimum of two surficial aquifer test wells, separated by a minimum of 500 feet, unless the Department of Environmental Quality has determined that the separation distance between test wells can be less than 500 feet;

2. That any two surficial aquifer water quality sample tests, analysis, measurements, or monitoring results at the proposed or existing water withdrawal site conducted by a laboratory certified by the Environmental Laboratory Certification Program (§ 2.2-1105 of the Code of Virginia), Certification for Noncommercial Environmental Laboratories (1VAC30-45), or Accreditation for Commercial Environmental Laboratories (1VAC30-46) and collected at least 30 days but no more than 60 days apart, exceeds any of the water quality values as follows:

- a. Bicarbonate levels greater than 120 mg/l;
- b. Chloride (Cl) levels greater than 70 mg/l;
- c. Sodium (Na) levels greater than 70 mg/l;
- d. Manganese (Mn) levels greater than 0.2 mg/l;
- e. Iron (Fe) levels greater than 5 mg/l; or
- f. Electric conductivity greater than 1.5 ds/m.

C. Any person who satisfies the criteria in subsection B of this section may construct a well for nonagricultural irrigation purposes outside of the surficial aquifer but shall be required to apply for an individual permit in accordance with 9VAC25-610-95 B prior for the purposes of withdrawing 300,000 gallons or more of groundwater in any month rather than obtaining coverage under this general permit.

9VAC25-920-90. Application.

A. The applicant shall file a complete application in accordance with this section for coverage under this general permit for use of the surficial aquifer in a groundwater management area.

B. A complete application for general permit coverage, at a minimum, consists of the following information:

1. The permit fee as required by the Fees for Permits and Certificates (9VAC25-20).
2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the [board department]. The application forms are available from the [Department of Environmental Quality department].
3. A signature as described in 9VAC25-610-150.
4. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;
5. For all proposed wells, the well name, proposed well depth, screen intervals, pumping rate, and latitude and longitude.

6. Locations of all existing and proposed wells associated with the application shown on a USGS 7.5 minute topographic map or equivalent computer generated map. The map shall be of sufficient detail such that all wells may be easily located for site inspection. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The map must show the outline of the property and the location of each of its existing and proposed wells and must include all springs, rivers, and other surface water bodies.

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable.

8. Notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 calendar days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery.

9. Documentation justifying the volume of groundwater withdrawal requested as described in the groundwater withdrawal application provided in accordance with 9VAC25-920-90 B 2.

10. The department shall require a complete suite of geophysical logs (16"/64" Normal, Single Point, Self Potential, Lateral, and Natural Gamma at a scale of 20 feet per inch), as follows:

a. The geophysical logs shall be obtained from boreholes at the locations and depths approved by the department;

b. At least four months prior to the scheduled geophysical logging, the applicant shall notify the department of the drilling timetable to receive further guidance needed on performing the geophysical logging and to allow scheduling of department staff to make a site visit during the drilling of the borehole and the geophysical logging; and

c. Geophysical log data collected without the oversight of the department will not be accepted by the department.

11. In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

a. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

b. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

c. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

d. The requirement that the claimant provide documentation that the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the

well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

C. The [board department] may waive the requirement for information listed in subsection B of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

D. If an application is not accepted as complete by the [board department] under the requirements of subsection B of this section, the [board department] will require the submission of additional information pursuant to 9VAC25-610-98.

E. An incomplete permit application for coverage under this general permit may be administratively withdrawn from processing by the [board department] for failure to provide the required information after 60 calendar days from the date of the latest written information request made by the [board department] . An applicant may request a suspension of application review by the [board department] . A submission by the applicant making such a request shall not preclude the [board department] from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project after the time that the original permit application was administratively withdrawn shall require submittal of an additional permit application fee.

9VAC25-920-100. General permit.

An owner whose application is accepted by the [board department] will receive coverage under the following permit and shall comply with the requirements in the permit and be subject to all requirements of 9VAC25-610 and the Ground Water Management Act of 1992.

Effective date: (insert the effective date of the regulation).

Expiration date: (insert the date 15 years after the effective date of the regulation).

GENERAL PERMIT FOR THE USE OF IRRIGATION WITHDRAWALS FROM THE SURFICIAL AQUIFER GREATER THAN 300,000 GALLONS IN ANY ONE MONTH

Pursuant to § 62.1-256 of the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) and Groundwater Withdrawal Regulations (9VAC25-610), the State Water Control Board hereby authorizes the permittee to withdraw and use groundwater in accordance with this permit.

The authorized withdrawals shall be in accordance with the information submitted with the application, this cover page, Part I – Operating Conditions, and Part II – Conditions Applicable to All Groundwater Withdrawal Permits, as set forth in this general permit.

PART I.

Operating Conditions.

A. Authorized withdrawal. The withdrawal of groundwater shall be limited to the wells identified in the groundwater withdrawal application submitted in accordance with 9VAC25-920-90.

B. Reporting.

1. Water withdrawn from each well shall be recorded monthly at the end of each month, and reported to the department annually, in paper or electronic format, on a form provided

by the department, by July 10 for the respective previous 12 months. Records of water use shall be maintained by the Permittee in accordance with Part II F 1 through F 4 of this general permit.

2. The permittee shall report any amount in excess of the permitted withdrawal limit by the fifth day of the month following the month when such a withdrawal occurred. Failure to report may result in compliance or enforcement activities.

C. Water conservation and management plan.

1. The permittee shall conduct an annual water audit quantifying the flows of the water in the system to understand its usage, reduce losses, and improve water conservation. The audit shall include:

a. Documentation of an annual review of the amount of water used compared with the expected need of the system to ensure that the water system uses the minimum amount of water necessary;

b. A list of any new water saving equipment, procedures, or improvements installed or water saving processes implemented during the previous year;

c. Documentation of implementation and evaluation of a leak detection and repair process, including documented quarterly visual monitoring during withdrawal periods where the permittee will locate and correct system leaks; and

d. A Groundwater Withdrawal Water Conservation and Management Audit Form, completed in its entirety, provided by the department.

2. Results of the annual audit shall be maintained onsite and available to the department upon request.

3. When a drought emergency is declared by the Commonwealth of Virginia in the permittee's Virginia Drought Evaluation Region or in accordance with a county or locality drought management ordinance, the permittee shall implement either the provisions directed by the Commonwealth or the drought management ordinance, whichever is the most restrictive. The permittee shall be responsible for determining when drought emergencies are declared. The permittee shall retain records documenting that mandatory conservation measures were implemented during declared drought emergencies.

D. Mitigation plan. In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

1. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

2. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

3. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

4. The requirement that the claimant provide documentation that the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic

water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

E. Property rights. The issuance of coverage under this general permit does not convey property rights in either real or personal property or exclusive privileges, nor does it authorize injury to private property, an invasion of personal property rights, or an infringement of federal, state, or local laws or regulations. The fact that an owner obtains coverage under this general permit shall not constitute a defense in a civil action involving private rights.

F. Well tags. Each well that is included in the coverage under this general permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records, at a minimum, the DEQ well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well. Such well identification plates shall be in a format specified by the [board department] and are available from the department.

G. Well abandonment. The permittee shall permanently abandon out-of-service wells in accordance with the Virginia Department of Health regulations and shall submit documentation to the Department of Environmental Quality within 30 calendar days of abandonment. At least two weeks prior to the scheduled abandonment, the permittee shall notify the department of the scheduled abandonment date.

PART II.

Conditions Applicable to All Groundwater Withdrawal Permits.

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permit holder of the duty to comply with all applicable federal and state statutes, regulations, and prohibitions. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to avoid all adverse impacts that may result from this withdrawal as defined in 9VAC25-610-10 and to provide mitigation of the adverse impact in accordance with Part I D of this general permit.

D. Inspection, entry, and information requests. Upon presentation of credentials, the permittee shall allow the [board,] the department [,] or any duly authorized agent of the [board department] at reasonable times and under reasonable circumstances (i) to enter upon the permittee's property, public or private; (ii) to have access to, inspect, and copy any records that must be kept as part of the permit conditions; and (iii) to inspect any facilities, well, water supply system, operations, or practices, including sampling, monitoring and withdrawal, that are regulated or required under the permit. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained in this general permit shall make an inspection time unreasonable during an emergency.

E. Duty to provide information. The permittee shall furnish to the [board-or] department, within a reasonable time, information that the [board department] may request to determine whether cause exists for modifying, revoking, reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the [board-or] department, upon request, copies of records required to be kept by regulation or this permit.

F. Water withdrawal volume records requirements.

1. The permittee shall maintain a copy of the permit on-site and shall make the permit available upon request.
2. Measurements taken for the purpose of monitoring shall be representative of the metered activity.
3. The permittee shall retain records of all metering information, including (i) all calibration and maintenance records, (ii) copies of all reports required by the permit, and (iii) records of all data used to complete the application for the permit for a period of at least three years from the date of the expiration of coverage under this general permit. This period may be extended by request of the [board department] at any time.
4. Records of metering information shall include, as appropriate:
 - a. The date, exact place, and time of measurements;
 - b. The names of the individuals who performed measurements;
 - c. The date the measurements were performed; and
 - d. The results of the measurements.

G. Water withdrawal volume metering and equipment requirements. Each well and impoundment or impoundment system shall have an in-line totalizing flow meter to read gallons, cubic feet, or cubic meters installed prior to beginning the permitted use. Meters shall produce volume determinations within plus or minus 10% of actual flows.

1. A defective meter or other device shall be repaired or replaced within 30 business days of discovery.
2. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals. The period during which the meter was defective must be clearly identified in the groundwater withdrawal report required by Part I B of this permit. An alternative method for determining flow may be approved by the [board department] on a case-by-case basis.

H. Well construction. At least four months prior to the scheduled construction of any well, the permittee shall notify the department of the construction timetable and shall receive prior approval of the well location and acquire the DEQ well number. All wells shall be constructed in accordance with the following requirements.

1. A well site approval letter or well construction permit shall be obtained from the Virginia Department of Health prior to construction of the well.
2. For wells the Department of Environmental Quality estimates shall be within 20 feet below land surface of an aquifer top confining layer a complete suite of geophysical logs (16"/64" Normal, Single Point, Self-Potential, Lateral, and Natural Gamma) shall be completed for the well and submitted to the department along with the corresponding completion report as required by 9VAC25-920-90 B 10.
3. The permittee's determination of the surficial aquifer depth shall be submitted to the department for review and approval, or approved on site by the department's geologist, prior to installation of any pump.
4. A completed Uniform Water Well Completion Report, Form GW-2 and any additional water well construction documents shall be submitted to the department within 30 calendar days of the completion of any well and prior to the initiation of any withdrawal from the well. The assigned DEQ well number shall be included on all well documents.

I. Transfer of permits.

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

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

- a. The current permittee notifies the department within 30 business days of the proposed transfer of the title to the facility or property, unless permission for a later date has been granted by the [board department] ;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The [board department] does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II I 2 b of this permit.

J. Notice of planned change. The permittee shall give notice to the department at least 30 business days prior to any planned alterations or additions to the permitted water withdrawal system.

K. Revocation and termination of coverage.

1. General permit coverage may be revoked in accordance with 9VAC25-610-290 and 9VAC25-610-300.

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

- a. Operations have ceased at the facility and there are no longer withdrawals from the surficial aquifer.
- b. A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a Change of Ownership Agreement Form has been submitted.
- c. All groundwater withdrawals associated have been covered by an individual groundwater withdrawal permit.
- d. Termination of coverage is being requested for another reason, provided the [board department] agrees that coverage under this general permit is no longer needed.

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

- a. The owner's name, mailing address, telephone number, and email address, if available;
- b. The facility name and location;
- c. The general permit number;
- d. A completed Termination Agreement Form obtained from the department; and
- e. The basis for submitting the notice of termination, including:
 - (1) A statement indicating that a new owner has assumed responsibility for the facility;
 - (2) A statement indicating that operations have ceased at the facility, and there are no longer groundwater withdrawals from the surficial aquifer;
 - (3) A statement indicating that all groundwater withdrawals have been covered by an individual Groundwater Withdrawal permit; or
 - (4) A statement indicating that termination of coverage is being requested for another reason (state the reason); and
 - (5) The following certification: "I certify under penalty of law that all groundwater withdrawals from the surficial aquifer at the identified facility that are authorized by this general permit have been eliminated, or covered under a groundwater withdrawal

individual permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to withdraw groundwater in accordance with the general permit, and that withdrawing groundwater is unlawful where the withdrawal is not authorized by a groundwater withdrawal permit or otherwise excluded from permitting. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Virginia Groundwater Management Act."

4. The notice of termination shall be signed in accordance with 9VAC25-610-150.

L. Continuation of coverage. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete application at least 90 calendar days prior to the expiration date of the permit, or a later submittal established by the [board department], which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to withdraw until such time as the [board department] either:

1. Issues coverage to the owner under this general permit; or
2. Notifies the owner that the withdrawal is not eligible for coverage under this general permit.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new application at least 90 calendar days before the expiration date of the existing permit, unless permission for a later date has been granted in writing by the [board department]. The [board department] shall not grant permission for application to be submitted later than the expiration date of the existing permit.



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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary Action: 9VAC25-920
VAC Chapter title(s)	9VAC25-920 - General Permit For The Use Of Irrigation Withdrawals From The Surficial Aquifer Greater Than 300,000 Gallons In Any One Month
Action title	Creation of a General Permit for Use of the Surficial Aquifer in a Groundwater Management Area
Final agency action date	
Date this document prepared	May 5, 2022

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The intent of this new regulation is to conserve groundwater in the confined aquifers within the Groundwater Management Areas for potable needs. This regulatory proposal will create a new general permit to promote use of the surficial aquifer in any Groundwater Management Areas.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Chapter 670 of the 2020 Acts of the Assembly (new §§62.1-258.1, 62.1-266 H and I) directs the Board to address the impacts of the non-agricultural irrigation on the confined aquifer system by prohibiting the use of these aquifers unless the quality and quantity of the surficial aquifer is insufficient for the proposed beneficial use.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Act" means the Ground Water Management Act of 1992 (§62.1-254 of the Code of Virginia)

"Board" means the State Water Control Board. However, when used outside the promulgation of regulations, including regulations to establish general permits, "Board" means the "Department of Environmental Quality."

"Groundwater management area" means a geographically defined groundwater area in which the board has deemed the levels, supply, or quality of groundwater to be adverse to public welfare, health, and safety

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At its meeting on June 22, 2022 the State Water Control Board adopted General Permit For The Use Of Irrigation Withdrawals From The Surficial Aquifer Greater Than 300,000 Gallons In Any One Month 9VAC-25-920 and promulgated Chapter 9VAC25-920 as a final regulation.

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 62.1-256 of the Code of Virginia authorizes the Board to adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter. Chapter 670 of the 2020 Acts of Assembly (new §§ 62.1-258.1, 62.1-266 H and I) directs the Board to address the impacts of non-agricultural irrigation on the confined aquifer system by prohibiting the use of these aquifers unless the quality and quantity of the surficial aquifer is insufficient for the proposed beneficial use. The development of regulations to address this legislative objective are authorized.

Section 62.1-258.1 of the Code of Virginia provides that unless the Department of Environmental Quality had determined that the quantity and quality of the groundwater in the surficial aquifer is not adequate to supply the proposed beneficial use, it shall be unlawful in a ground water management area for any

person to construct a well for nonagricultural irrigation purposes except in the surficial aquifer. Section 62.1-266 H provides the Board may adopt regulations to develop a general permit for the regulation of irrigation withdrawals from the surficial aquifer greater than 300,000 gallons in any one month.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The development of a general permit is necessary to protect the health, safety, and welfare of citizens by providing for sustainability of the confined aquifers for future uses. There is significant non-potable groundwater use from the confined aquifer system for non-agricultural irrigation purposes, such as golf courses and community green space. Increasing the use of the surficial aquifer or water table aquifer for non-potable non-agricultural irrigation achieves greater long term confined aquifer sustainability. This regulatory proposal will create a new general permit to promote use of the surficial aquifer for non-agricultural withdrawal in any Ground Water Management Area.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The new general permit for non-agricultural irrigation from the surficial aquifer will include the establishment of permit terms, withdrawal limits, reporting requirements and criteria for determining adequate quality and quantity from the surficial aquifer necessary to permit withdrawals

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantages to the public and the agency of creating a general permit is that it will be available to facilities with eligible withdrawals to withdraw groundwater in a manner that is protective of the confined aquifers without the increased cost and more complex application process associated with issuing an individual permit. There are no known disadvantages.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes reported on the Agency Background Document submitted for the previous stage regarding any requirements of the regulatory change which is more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no changes to the information reported on the Agency Background Document submitted for the previous stage.

Localities Particularly Affected

There are no changes to the information reported on the Agency Background Document submitted for the previous stage.

Other Entities Particularly Affected

There are no changes to the information reported on the Agency Background Document submitted for the previous stage.

For purposes of "Locality Particularly Affected" under the Board's statutes

There are no changes to the information reported on the Agency Background Document submitted for the previous stage.

Public Comment

Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Beck Stanley Director of Government Affairs Virginia Agribusiness Council	I am writing you today on behalf of the Virginia Agribusiness Council to provide comments regarding the General Use Permit of the Surficial Aquifer in a Groundwater Management Area. We thank the Department of Environmental Quality and staff for their work over the last year developing this regulation and including the Council in the Regulatory Advisory Panel on the issue. The Council believes that a general permit with reasonable fees is adequate and that the regulation proposes reasonable standards with fees to cover internal costs to implement the program. We appreciate staff taking into account the differing users of the	Mr. Stanley and Virginia Agribusiness Council support is noted.

	<p>surficial aquifer and creating reasonable conditions for its use. We are especially grateful to staff for their compilation of an economic impact report and the robust discussions that took place during the workgroup last year. As these permits have been traditionally funded by general fund revenue, the more stable fee structure as presented in the workgroup is a better long-term solution that will ensure fair and adequate review by the Department. Going forward, we hope the Department will work to keep these fees as low as possible.</p> <p>We appreciate the Department's inclusion of reasonable quality standards for determination of possible contamination of the surficial aquifers. Our members in the golf industry and others require water sources free of contamination to maintain their facilities. Certain grasses, droughts, pests, fungi, soil health and the water all create unpredictable and uncertain conditions for golf courses. They require the ability to utilize a variety of water sources to address these needs throughout the year, while also controlling the high costs of maintain unique grasses and features. The drilling of wells is an expensive endeavor and creating a regulatory structure that is not prohibitive and yet still protects the source from saltwater incursion is important.</p> <p>As always, we are grateful for this opportunity to comment and are happy to support the proposal as written.</p>	
<p>Jeff Whitmire Virginia Golf Course Superintendents Association</p>	<p>On behalf of the Virginia Golf Course Superintendents Association (VGCSA), I write to provide feedback related to 9VAC25-920, proposed regulations to create a new general permit to promote the use of the surficial aquifer in any Groundwater Management Area.</p>	<p>Mr. Whitmire and Virginia Golf Course Superintendents Associated support is noted.</p>

	<p>The VGCSA is dedicated to leading the golf industry by serving its members and advancing the profession and the game of golf. Our members professionally maintain green spaces across the Commonwealth, ensuring environmental stewardship of natural resources and employing environmental best management practices that help preserve and enrich Virginia's waterways. Golf course superintendents have partnered with Virginia Tech scientists to develop and document best management practices (BMPs) for golf course management. These BMPs help golf course superintendents protect our state's surface and groundwater resources, provide habitats for wildlife, reduce pesticide usage, and conserve energy.</p> <p>Our members are expertly trained to conserve water and efficiently manage their courses. The ideal playing for golf is "firm and fast", with maintenance requiring limited water usage. Turfgrass breeding also continues to progress, with newer varieties needing less water to flourish.</p> <p>We appreciate Virginia's Department of Environmental Quality (DEQ) including a golf course superintendent on the regulatory advisory panel involved in the development of these proposed regulations, as this issue is critically important to golf courses. To properly maintain playing surfaces, having the appropriate quality of water is vital. Saltwater intrusion is a big concern, and with the low height at which turfgrass is maintained on a golf course, water that is too rich in salt content is detrimental to the turf. In short, if the groundwater is not of the appropriate quality, it will have a negative impact on golf course quality and financial sustainability. Quantity is unimportant is the quality is not right.</p>	
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	<p>Due to the authorizing legislation (Senate Bill 673 (Mason) from 2020) containing an expedited review process for golf courses seeking a determination from DEQ that either the quantity or quality of the ground water in a surficial aquifer is not adequate to meet a proposed beneficial use, it is important to have appropriate criteria for making that determination. We greatly appreciate the inclusion of reasonable quality standards based on current science that addresses the levels of bicarbonate, chloride, sodium, manganese, iron, and electrical conductivity that could cause surficial aquifer quality to not be sufficient for nonagricultural irrigation, such as a use on a golf course.</p> <p>Furthermore, having a process that is more streamlined – and less expensive – for golf courses where the water quality is sufficient to utilize the surficial aquifer is very helpful. We also believe it is important that these regulations not affect golf courses that have already invested in deep aquifer wells and are pleased that as proposed, they would only apply to newly drilled wells.</p> <p>Drilling wells is an expensive endeavor for any golf course. The deeper the well, the higher the cost involved. Golf course superintendents will not seek to drill any deeper than necessary to obtain the needed quality of water. VGCSA members have a strong track record of reducing environmental impacts through their water management and water quality monitoring practices, and we will continue to work with the Commonwealth of Virginia to promote water conservation and improved water quality.</p>	
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Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Put an asterisk next to any substantive changes.*

In order to incorporate changes resulting from the approval and passage of Senate Bill 657 during the 2022 General Assembly Session, "board" has been replaced with "department" where necessary to implement the new statutory requirements

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
920-10			Definitions, specifically for the following terms: "Board"	SB657 passed during the 2022 Session of the Virginia General Assembly made changes to regulations that included changing designations from "board" to "department" where appropriate and changed the definition of "Board".
920-40 (Deleted)				Removal of delegation of authority where authority is now statutorily vested in DEQ per SB657

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Promulgating 9VAC25-920 (General Permit For The Use Of Irrigation Withdrawals From The Surficial Aquifer Greater Than 300,000 Gallons In Any One Month:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-10	Definitions, specifically for the following terms: "Adverse impact," "Agricultural irrigation," "Applicant," "Area of impact," "Beneficial use," "Board," "Department," "Eastern Shore Groundwater Management Area," "Eastern Virginia Groundwater Management Area," "Groundwater," "Groundwater Management Area," "Irrigation," "Mitigate," "Nonagricultural irrigation," "Permit," "Permittee," "Person," "Surface water and groundwater conjunctive use system," "Virginia Drought Evaluation Regions"	§§ 62.1-44.2 et seq., 62.1-254 et seq., and 62.1-256 of the Code of Virginia and 9VAC25-610 (Groundwater Withdrawal Regulation).	<p>Specifies that the definitions in the Groundwater Management Act and Groundwater Withdrawal Regulation apply, but adds more specific definitions to this proposed regulation.</p> <p>Intent is to facilitate implementation of the new general permit requirements by being clear about what the terms used in 9VAC25-920 mean.</p> <p>Necessary for clarity in implementing the proposed 9VAC25-920 general permit requirements.</p> <p>Impact to incentivize the use of the surficial aquifer through the use of a general permit.</p>
920-20	Information requirements.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610-380.	<p>Specifies the requirements of 9VAC25-610-380 apply, and specifies that the department may require additional information pertinent to the review of an application and requires that the owner provide that information.</p> <p>Intent is to facilitate implementation of the new general permit requirements by requiring that owners provide such information that the department deems necessary to determine the impact of the withdrawals.</p> <p>Necessary to ensure that sufficient information is available for proper review of the general permit application.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of the general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-30	Purpose.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies the purpose for the general permit, application processing by the department, and how the processing of the general permit is different from procedures for individual permits.</p> <p>Intent is to provide information about application review and processing requirements, and to require department action according to those requirements.</p> <p>Necessary to ensure that the department action process is clear to applicants and that department action follows statutory requirements for reviews and final action.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of the general permit.</p>
920-40 (Deleted)			Removal of delegation of authority where authority is now statutorily vested in DEQ per SB657

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-50	Effective date of the permit.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies the effective date of the general permit (based upon the effective date of the General Permit Regulation), and the expiration date of the general permit, 15 years later. Coverage would be provided under the general permit until expiration of the general permit unless terminated or revoked earlier.</p> <p>Intent is to have coverage under the general permit extend to the expiration date for all approved users regardless of when coverage is granted, and to provide as much of 15 years of coverage that remains before that expiration date.</p> <p>Necessary to ensure that the general permit term is a maximum of 15 years.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-60	Authorization to withdraw groundwater from the surficial aquifer of a Groundwater Management Area	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that persons granted coverage may withdraw water from the surficial aquifer provided that an application is submitted in accordance with this chapter, any required application fee is paid, the applicant receives coverage from the department, the applicant complies with the requirements of the general permit and other applicable laws and regulations, and the applicant is not required to obtain an individual permit for the proposed withdrawals. An eligible applicant may instead apply for an individual permit at his discretion.</p> <p>Intent is to authorize withdrawals after application review and the applicant is granted coverage under the general permit, as long as the applicant remains compliant with the general permit and is not otherwise required to obtain an individual permit.</p> <p>Necessary to authorize and facilitate compliant withdrawals from the surficial aquifer under the permit terms.</p> <p>Intent is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-70	Reasons to deny coverage	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that it shall deny application for coverage under this general permit if the proposed withdrawal is outside a groundwater management area, in an aquifer other than the surficial aquifer of a groundwater management area, or the activity causes, or may contribute to causing more than minimal water level declines in the underlying confined aquifer system or degradation of water quality, stream or wetland hydrology, or other instream beneficial use. The department may require an individual permit in accordance with 9VAC25-610-95 B rather than granting coverage under this general permit.</p> <p>Necessary to ensure that withdrawals under the general permit are limited to the surficial aquifer without adverse groundwater or surface water impacts.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-80 A	Prohibitions and Exclusions	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that it shall be unlawful for any person to construct a well for nonagricultural irrigation withdrawal purposes greater than 300,000 gallons in any one month in a groundwater management area except in the surficial aquifer, unless the department has determined the quantity or quality of the groundwater in the surficial aquifer is not adequate to supply the proposed beneficial use.</p> <p>Intent is to allow groundwater withdrawals to the surficial aquifer in a groundwater management area without requiring applicants to do expensive testing and monitoring.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>
920-80 B	Prohibitions and Exclusions, Criteria	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that any person may construct a well for nonagricultural irrigation purposes in a groundwater management area outside of the surficial aquifer if either: the ratio of greater than one surficial well per acre would be required to support the proposed beneficial use water withdrawal volume; or that any two surficial aquifer water quality sample tests, analysis, measurements, or monitoring results, at the proposed or existing water withdrawal site exceeds specific water quality values.</p> <p>Intent is to establish criteria for not using the surficial aquifer for nonagricultural irrigation use.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-80 C	Prohibitions and Exclusions, Individual Permits	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that any person who satisfied 920-80 B may construct a well for nonagricultural irrigation purposes outside of the surficial aquifer but shall be required to apply for an individual permit prior to for the purposes of withdrawing 300,000 gallons or more of groundwater in any month rather than obtaining coverage under this general permit.</p> <p>Intent is to establish criteria for not using the surficial aquifer for nonagricultural irrigation use.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>
920-90 A	Application requirements. Requirement to file a complete application.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Requires the applicant to file a complete application for coverage in accordance with the requirements of the rest of this section.</p> <p>Intent is to ensure that the application requirements and application process are clearly provided.</p> <p>Necessary to ensure that sufficient information is included with the application to allow proper review of the application by the department and to ensure timely final action on the application.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of the general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-90 B	Application requirements. Application content.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies certain minimum information be provided in the application for coverage in accordance with subdivisions 1 through 11, including: the permit fee, if applicable; signature; well construction reports, well descriptions, well locations on certain USGS maps; information on conjunctive use systems, if applicable; the certification of compliance notification from the local governing body; justification of the groundwater withdrawal volume requested; geophysical logs; and requirements for a plan to mitigate.</p> <p>Intent is to ensure that application requirements are clear and are the minimum necessary requirements to complete the review process.</p> <p>Necessary to ensure that sufficient information is included with the application to allow proper review of the application by the department and ensure timely final action on the application.</p> <p>Intent is to incentivize the use of the surficial aquifer through use of the general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-90 C	Application requirements. Department waiver.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that the department may waive the minimum information requirements of subsection B if it has access to substantially identical information that is accurate and relevant.</p> <p>Intent is to ensure that the application requirements are the minimum necessary to complete the review process.</p> <p>Necessary to ensure that sufficient information is available to the department without the applicant having to provide information identical to information already available.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>
920-90 D	Applicant requirements. Requiring the submission of additional information.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that the department shall require the applicant to submit additional information if the application is determined to be incomplete.</p> <p>Intent is to ensure that the application requirements necessary to complete the review process are met according to established processes.</p> <p>Necessary to ensure that sufficient information is available to the department.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-90 E.	Application requirements. Procedures for administrative withdrawal of an incomplete application.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that the department may administratively withdraw an incomplete application for failure to provide the additional information required by the department within 60 calendar days of the department's last request. Provisions are made for an applicant requesting that the application review process be suspended, and for additional application fees being required from the applicant when resubmitting an application that was administratively withdrawn by the department.</p> <p>Intent is to provide processes for withdrawing applications, suspending review of applications, and resubmitting withdrawn applications.</p> <p>Necessary to specify and clarify processes necessary for management of incomplete applications.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-100.	General Permit. Coverage and authorization for withdrawals.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Coverage granted to the applicant for the remaining term of the general permit, and compliance with the requirements of the general permit and 9VAC25-610 is required for owners whose application is accepted by the department. Withdrawals are authorized in accordance with the application, the general permit provisions for operating conditions, and the general conditions applicable to all groundwater withdrawal permits.</p> <p>Intent is to provide the authorization for withdrawals from the surficial aquifer consistent with the application and general permit conditions.</p> <p>Necessary to implement the withdrawal of groundwater from the surficial aquifer.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>
920-100. Part I. Subsection A.	General Permit. Operating Conditions. Authorized withdrawal.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>The withdrawal of groundwater is specified to be limited to the wells identified in the application.</p> <p>Intent is to provide the authorization for withdrawals from the surficial aquifer consistent with the application.</p> <p>Necessary to implement the withdrawal of groundwater from the surficial aquifer.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part I.</p> <p>Subsection B.</p>	<p>General Permit.</p> <p>Operating Conditions.</p> <p>Reporting.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>The withdrawal of groundwater is required to be recorded at the end of each month and reported to the department of July 10th of each year for the previous 12 months. Records of water use are required to be maintained by the permittee in accordance with conditions specified in Part II of the general permit. Reporting of any excess in the monthly permitted withdrawal is required to be reported by the 5th day of the month following the month of the excess withdrawal.</p> <p>Intent is to provide the minimum recordkeeping and reporting requirements that are necessary to demonstrate compliance with the general permit.</p> <p>Necessary to implement the withdrawal of groundwater from the surficial aquifer.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part I.</p> <p>Subsection C.</p>	<p>General Permit.</p> <p>Operating Conditions.</p> <p>Water Conservation and Management Plan.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>An annual water audit is required that quantifies the flows of water in the system and shall include a documented review of water use compared with expected need, documentation of changes to the water saving equipment, procedures or improvements or water saving processes, implementation and evaluation of a leak detection and repair process changes to the system implemented in the previous year, and a completed department-provided Audit Form. Results of the audit must be maintained onsite and provided to the department on request. Also, when a drought emergency is declared by the Commonwealth of Virginia in the permittee's Virginia Drought Evaluation Region, the permittee is required to implement the most restrictive of the state emergency provisions or the local drought management ordinance measures and maintain a record of the actions taken.</p> <p>Intent is to require that the permittee implement water conservation measures that are appropriate for use of the surficial aquifer.</p> <p>Necessary to conserve the surficial aquifer while using it.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100. Part I. Subsection D.</p>	<p>General Permit. Operating Conditions. Mitigation Plan.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies mitigation measures to be taken when an applicant's proposed well has an area of impact beyond the permittee's property and existing groundwater withdrawers are included within that area of impact.</p> <p>Intent is to provide the processes for mitigation and resolution of claims of adverse impacts from a well's area of impacts.</p> <p>Necessary to mitigate disputes over adverse impacts affecting the withdrawal of groundwater from the surficial aquifer.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>
<p>920-100. Part I. Subsection E.</p>	<p>General Permit. Operating Conditions. Property Rights.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies issuance of coverage under this permit does not convey property rights in either real or personal property or exclusive privileges, nor does it authorize injury to personal property, an invasion of personal property rights, or an infringement of federal, state or local laws or regulations.</p> <p>Necessary to identify that an owner who obtains coverage under this general permit shall not constitute a defense in civil action involving property rights.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100. Part I. Subsection F.</p>	<p>General Permit. Operating Conditions. Well tags.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that well tags shall be affixed to the well casing in a prominent place with specific minimum information on the tag in a format specified by the department.</p> <p>Intent is to provide the means of easily identifying the well.</p> <p>Necessary to identify the well for compliance, recordkeeping, and reporting purposes.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>
<p>920-100. Part I. Subsection G.</p>	<p>General Permit. Operating Conditions. Well abandonment.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies certain permittee actions required prior to abandonment of out of service wells, including complying with Department of Health regulations concerning abandonment, notification to the Department of Environmental Quality 2 weeks prior to abandonment, and submitting documentation of the abandonment to the department within 30 calendar days after abandonment.</p> <p>Intent is to ensure compliance with regulation requirements for abandonment of out of service wells.</p> <p>Necessary to ensure compliance with regulatory requirements.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection A.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Duty to comply.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that compliance with all permit conditions is required and noncompliance is a violation of law and grounds for enforcement action, permit termination, revocation, permit modification, and denial of an application. Nothing in the permit will be construed to relieve the permittee of the duty to comply with all applicable statutes, regulations and prohibitions.</p> <p>Intent is to ensure compliance with all permit, regulation, and statutory requirements.</p> <p>Necessary to ensure compliance with all applicable requirements.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>
<p>920-100.</p> <p>Part II.</p> <p>Subsection B.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Duty to cease or confine activity.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.</p> <p>Intent is to ensure compliance with all permit, regulation, and statutory requirements.</p> <p>Necessary to ensure compliance with all applicable requirements.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection C.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Duty to mitigate.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that the permittee shall take all reasonable steps to avoid all adverse impacts that may result from this withdrawal as defined in 9VAC25-610-10 and provide mitigation of the adverse impact.</p> <p>Intent is to ensure that the permittee is responsible for avoiding all adverse impacts from the withdrawals.</p> <p>Necessary to ensure that any potential adverse impacts resulting from withdrawal are avoided or resolved.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>
<p>920-100.</p> <p>Part II.</p> <p>Subsection D.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Inspection, Entry, and Information Requests.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that the permittee shall allow the department's duly authorized agents under reasonable times and circumstances, to enter the permittee's property to have access to, inspect and copy records, inspect facilities, systems, operations, and practices regulated or required under the general permit. Times for inspections are reasonable during regular business hours and during emergencies.</p> <p>Intent is to ensure that the agency personnel have access to permitted facilities, systems, operations, and practices, and the records required by the general permit, for inspection at reasonable times.</p> <p>Necessary to ensure that inspections and other reasonable compliance determinations may occur.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
920-100. Part II. Subsection E.	General Permit. Conditions Applicable to All Groundwater Withdrawal Permits. Duty to provide information.	Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)	<p>Specifies that the permittee shall furnish any information requested by the department necessary to determine if cause exists for making changes to the permit or determining compliance with the permit and shall provide copies or records required to be kept by the permit or regulation.</p> <p>Intent is to ensure that the permittee complies with information requests necessary to determine compliance.</p> <p>Necessary to ensure that compliance can be determined.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection F.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Water withdrawal volume records requirements.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that the permittee shall maintain and provide copies of the permit on request; take measurements representative of metered activity; retain records of metering information, required reports, and data used to complete the permit application for three years after the expiration of coverage under the permit, which period may be extended by the department. It also specifies that metering records shall include the measurement date, place, and time; names of individuals performing the measurements, and the results of such measurements.</p> <p>Intent is to ensure that the permittee is responsible for retaining metering information for a sufficient time after the expiration of coverage.</p> <p>Necessary to ensure that all metering records necessary for compliance determinations are available beyond the permit expiration.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection G.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Water withdrawal volume metering and equipment requirements.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that the permittee's well impoundment, or impoundment system shall have an in-line totalizer flow meter accurate to plus or minus 10% of actual flows, installed prior to use, and that any defective meters shall be repaired or replaced within 30 business days of discovery. Withdrawal measurements are still required if there are defective meters, with volumes reported based upon generally accepted engineering methods. Periods in which the meter is defective shall be clearly identified in required reports and an alternative method for determining flow may be approved by the department on a case-by-case basis.</p> <p>Intent is to ensure that the permittee is responsible for measuring water flow accurately, maintaining the measuring devices, and reporting accurate flows regardless of defective metering.</p> <p>Necessary to ensure compliance with permittee well withdrawals.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection H.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Well construction.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that the applicant shall notify the department of a well's construction timetable at least 30 days before the scheduled construction begins and receive approval and a well number from the department. Wells must have a construction permit or approval letter from the Department of Health prior to construction. Permittees with wells with a maximum depth greater than 80 feet must submit a complete suite of geophysical logs to the department with the completion report. The permittee's determination of surficial aquifer depth shall be submitted to the department for review and approval prior to installing the well pump and a completed GW-2 form and other well construction documents shall be submitted to the department within 30 calendar days of the completion of the well and prior to the initiation of any withdrawal.</p> <p>Intent is to ensure that the well construction process is compliant and that the required reports demonstrate that the maximum well depth is within the surficial aquifer.</p> <p>Necessary to ensure that the wells constructed under this general permit are still eligible for coverage after the well is constructed.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection I.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Transfer of permits.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that the permittee notify the department before any transfer of the permit coverage, and that coverage under the general permit may be automatically transferred if three conditions are met: timely notice of property title transfer 30 business days beforehand; written agreement of the date of transfer of responsibility, coverage and liability; and the department does not notify the permittees of its intent to deny the new permittee coverage under the general permit.</p> <p>Intent is ensure that the permittees agree to the particulars of the transfer, that they also transfer responsibilities under the permit, and that the department has sufficient notice of the transfer to object if there are grounds to do so.</p> <p>Necessary to ensure that any all parties are informed and agree to any transfer of permit coverage.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection J.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Notice of planned change.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that the permittee is required to give the department 30 business days prior notice of any planned physical alterations or additions to the permitted water withdrawal system.</p> <p>Intent is ensure that the department is aware of any change that might affect the permit coverage of the well system or the quality of groundwater withdrawn from the surficial aquifer.</p> <p>Necessary to ensure valid permit coverage and avoid adverse impacts resulting from changes to the covered well system.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection K.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Revocation and termination of coverage.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that coverage under the general permit may be revoked by the department in accordance with the provisions of 9VAC25-610. The permittee may terminate coverage under the general permit under certain specific conditions by filing a notice of termination with the department. The notice of termination shall contain specified information, a completed termination agreement form, the basis for submitting the notice of termination, the specific certification statement contained in the regulation, and a signature of a responsible party in accordance with 9VAC25-610.</p> <p>Intent is ensure that revocation of the general permit coverage follows established regulatory procedures and termination of the general permit coverage by the permittee follows established regulatory procedures.</p> <p>Necessary to ensure that withdrawals previously covered under the general permit either cease, are covered by an individual permit, or coverage is transferred to another owner.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection L.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Continuation of coverage.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that permit coverage expires at the end of the term of the general permit. Exceptions are provided if the owner has provided a complete application 90 calendar days prior to expiration, in which case the owner may continue to withdraw until the department either issues coverage under a succeeding general permit or notifies the owner that the withdrawal is not eligible for coverage under a general permit.</p> <p>Intent is ensure that the permittee has the ability to continue to be covered beyond the term of the permit until provision is made for coverage under an effective general permit or until notified that coverage is not available under a general permit.</p> <p>Necessary to ensure that there is continued coverage available under certain specified circumstances.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
<p>920-100.</p> <p>Part II.</p> <p>Subsection M.</p>	<p>General Permit.</p> <p>Conditions Applicable to All Groundwater Withdrawal Permits.</p> <p>Duty to reapply.</p>	<p>Code of Virginia § 62.1-44.2 et seq., Code of Virginia § 62.1-254 et seq. (Ground Water Management Act of 1992), Code of Virginia § 62.1-256, and 9VAC25-610 (Groundwater Withdrawal Regulation)</p>	<p>Specifies that if the permittee wishes to continue a permitted activity after the expiration of the permit, it is the permittee's responsibility to apply for and obtain coverage under a new permit. Permittees covered by an effective general permit shall submit a new application at least 90 calendar days prior to expiration of the effective permit unless the department has granted permission for a later submission date in writing. The department is prohibited from granting permission for that new application to be submitted later than the expiration date of the existing permit.</p> <p>Intent is to make it clear that it is the permittee's responsibility to reapply for coverage under the new general permit as the expiration date of the existing general permit approaches, and under what circumstances that application must be made in order to be continuously covered.</p> <p>Necessary to ensure that there is continued coverage available to existing permittees if they apply under the specified circumstances.</p> <p>Impact is to incentivize the use of the surficial aquifer through the use of a general permit.</p>

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Alternatives to the proposal have been considered by the Department. The Department has determined that the proposed regulation (the first alternative) is appropriate, as it is the least burdensome, least intrusive and least costly alternative that fully meets statutory requirements and the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives considered, are discussed below.

1. Adopt the proposed regulation without amendment. This option is being selected because the proposed regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state and federal mandates, and associated regulations and policies. This option was not selected because it does not meet the state mandate, which could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to public health and welfare.
3. Adopt none of the proposed regulatory requirements. This option was not selected because it does not meet the requirements of the state mandate

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulation will have a direct impact on families.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

May 23, 2022

MEMORANDUM

TO: Board Members
FROM: Joseph Bryan, Office of VPDES Permits
SUBJECT: Reissuance of General VPDES Permit Regulation for Non-Contact Cooling Water Discharges of 50,000 Gallons Per Day Or Less 9VAC25-196

The current VPDES Non-Contact Cooling Water General Permit will expire on March 1, 2023 and the regulation establishing this general permit is being amended to reissue another term. The staff is bringing this proposed regulation amendment before the Board to request authorization to hold a public comment period and a public hearing. The proposed regulation takes into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action. A list of the TAC membership is attached.

Draft amendments showing proposed changes to the current regulation, the Agency Town Hall background document and the draft Fact Sheet are also attached. Substantive changes to the existing regulation are:

- Section 10 – Definitions – Revised the definition of “Board” in accordance with SB 657 passed during the 2022 Session of the General Assembly limiting the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations, and transferring the Board’s existing authority to issue permits and orders to the Department of Environmental Quality.
- Section 15 – Applicability of Incorporated References – Changed date to indicate that incorporated references are based on the Code of Federal Regulations published as of July 1, 2021.
- Section 30 – Delegation of Authority – Repealed section in accordance with SB 657 as noted above.
- Section 40 – Effective Date of Permit - Updated effective dates to April 1, 2023 – March 31, 2028 in order to begin the permit at the start of April to help ensure continuous e-DMR submittal using full calendar quarters (April – June, July – September, October – December, January – March,

etc.). Currently the permit abruptly ends before a full monitoring period is covered (March 1, 2023). The new date effectively requires the permit to be administratively continued between March 1, 2023 and March 31, 2023.

- Section 50 – Authorization to Discharge - Added a section indicating that facilities subject to the substantive provisions of the federal regulations at 40 CFR 125 Subparts I or J will be deemed not eligible for this general permit. These provisions of the federal regulations apply to new and existing facilities with both cooling water intake flows greater than 2.0 million gallons per day and which make use of greater than 25 percent of their intake flow exclusively for cooling. These federal provisions would not apply to any facility that meets the 50,000 gallons per day maximum threshold for the discharge of cooling water under this general permit.

Continuation of permit coverage is now contingent upon submittal of a registration statement 60 days prior to expiration, or a later submittal established by the department. This replaces the previous 30 day requirement in order to be consistent with other general permits.

- Section 60 - Registration Statement – Added a section requiring general cooling water intake structure information in order to inform any necessary 316(b) Best Technology Available (BTA) determinations. Section 316(b) of the Clean Water Act (CWA) requires that “the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.” Under state and federal regulations (9VAC25-31-165 C; 40 CFR 125.80(c) and 125.90(b)) cooling water intake requirements for facilities covered under this general permit must meet the requirements of CWA § 316(b) on a case-by-case, best professional judgement (BPJ) basis. The requested information will inform those case-by-case decisions, where necessary.

Registration statement deadlines for new and existing facilities changed from 30 days to 60 days prior to expiration of the general permit or commencement of discharge. Registration statement deadlines for facilities currently covered under an individual VPDES permit changed from 210 days to 240 days prior to expiration of the individual permit. State Corporation Commission entity number now required for a complete registration statement. Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry, registration statements shall be submitted electronically following three months’ notice by the department.

- Section 70 Part I A – Effluent Limitations – The numerical limitations from the Water Quality Standards (9VAC25-260) for chlorine in freshwater and saltwater replace “nondetectable” and the quantification limit (QL) for chlorine is moved from footnote (3) to footnote (4) for clarity. Reporting requirements remain unchanged.
- Section 70 Part I B – Special Conditions - MS4 notification now requires an email to be provided to the owner of the MS4.
- Section 70 Part II – Conditions Applicable to All Permits – Under reporting monitoring results, added the requirement for electronic reporting as noted in section 60 above. Also, updated the website link for reports of noncompliance.

A Notice of Intended Regulatory Action (NOIRA) for the amendment was published October 12, 2020. One comment was received via the Town Hall website and was considered during the technical advisory committee (TAC) meeting held on August 9, 2021.

The Office of the Attorney General will be sent the proposed regulation for certification of statutory authority. The U.S. Environmental Protection Agency will also need to review and approve the general permit prior to final adoption.

Attachments: TAC Membership, Draft General Permit Regulation, Agency Background Document (Town Hall), Draft Fact Sheet

TECHNICAL ADVISORY COMMITTEE MEMBERSHIP NON-CONTACT COOLING WATER GENERAL PERMIT REGULATION

<p>Keith McMurry Plant Engineer Gala Industries 181 Pauley St, Eagle Rock, VA 24085 (540) 884-3196 Keith.mcmurry@maag.com</p>	<p>Kevin Rideout Iluka Resources 12472 St. John Church Rd. Stony Creek VA 23882 (804) 721-7312 Kevin.Rideout@iluka.com www.iluka.com</p>
<p>Takisha Cannon Fairfax County Dept. of Public Works and Env. Services 12000 Gov. Ctr. Pkwy, Ste 449 Fairfax VA 22035 (703) 324-5885; (571) 992-4912 (c); (703) 802-5955 (fax) Takisha.Cannon@fairfaxcounty.gov</p>	
<p>DEQ Staff: Allan Brockenbrough – CO VPDES Joseph Bryan – CO VPDES</p>	<p>DEQ Staff Technical Liaisons: Troy Nipper – CO Compliance Susan Edwards – BRRO Permits Ann Zimmerman – NRO Permits Peter Sherman – CO VPDES</p>

1 **Project 6527 - Proposed**

2 **State Water Control Board**

3 **2023 Amendment and Reissuance of the Existing Regulation**

4 Chapter 196

5 Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact
6 Cooling Water Discharges of 50,000 Gallons Per Day or Less

7 **9VAC25-196-10. Definitions.**

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

12 "Blowdown" means a discharge of recirculating water from any cooling equipment or cooling
13 process in order to maintain a desired quality of the recirculating water. Boiler blowdown is
14 excluded from this definition.

15 "Board" means the State Water Control Board. However, when used outside the context of
16 the promulgation of regulations, including regulations to establish general permits, "Board" means
17 the "Department of Environmental Quality".

18 "Cooling water" means water used for cooling which does not come into direct contact with
19 any raw product, intermediate product (other than heat) or finished product. For the purposes of
20 this general permit, cooling water can be generated from any cooling equipment blowdown or
21 produced as a result of any noncontact cooling process.

22 "Department" or "DEQ" means the Virginia Department of Environmental Quality.

23 "Director" means the Director of the Virginia Department of Environmental Quality, or an
24 authorized representative.

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

30 **9VAC25-196-15. Applicability of incorporated references based on the dates that they**
31 **became effective.**

32 Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in
33 Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and
34 incorporated by reference, that regulation shall be as it exists and has been published as of July
35 1, ~~2017~~2021.

36 **9VAC25-196-20. Purpose.**

37 This general permit regulation governs point source discharges of noncontact cooling water
38 of 50,000 gallons per day or less to surface waters.

39 **9VAC25-196-30. Delegation of authority. (Repealed.)**

40 ~~The director, or an authorized representative, may perform any act of the board provided~~
41 ~~under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

42 **9VAC25-196-40. Effective date of the permit.**

43 This general permit will become effective on ~~March 2, 2018~~April 1, 2023. This general permit
44 will expire on ~~March 1, 2023~~March 31, 2028. This general permit is effective as to any covered
45 owner upon compliance with all the provisions of 9VAC25-196-50.

46 **9VAC25-196-50. Authorization to discharge.**

47 A. Any owner governed by this general permit is hereby authorized to discharge to surface
48 waters of the Commonwealth of Virginia provided that the owner submits and receives
49 acceptance by the ~~board~~department of the registration statement of 9VAC25-196-60, submits the
50 required permit fee, and complies with the effluent limitations and other requirements of 9VAC25-
51 196-70, and provided that the ~~board~~department has not notified the owner that the discharge is
52 not eligible for coverage in accordance with subsection B of this section.

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

- 55 1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170
56 B 3 of the VPDES Permit Regulation;
- 57 2. The owner is proposing to discharge to Class V stockable trout waters, Class VI natural
58 trout waters, or any state waters specifically named in other board regulations that prohibit
59 such discharges;
- 60 3. The discharge violates or would violate the antidegradation policy in the Water Quality
61 Standards at 9VAC25-260-30; ~~or~~
- 62 4. The discharge is not consistent with the assumptions and requirements of an approved
63 TMDL; ~~or~~
- 64 5. The facility is subject to the substantive provisions of 40 CFR Part 125 Subparts I or J.

65 C. Chlorine or any other halogen compounds shall not be used for disinfection or other
66 treatment purposes, including biocide applications, for any discharges to waters containing
67 endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality
68 Standards.

69 D. The owner shall not use tributyltin, any chemical additives containing tributyltin, or water
70 treatment chemicals containing hexavalent chromium in the cooling water systems.

71 E. The owner shall not use groundwater remediation wells as the source of cooling water.

72 F. Compliance with this general permit constitutes compliance, for purposes of enforcement,
73 with §§ 301, 302, 306, 307, 318, 404, and 405(a) through (b) of the federal Clean Water Act and
74 the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit
75 Regulation. Approval for coverage under this general permit does not relieve any owner of the
76 responsibility to comply with any other applicable federal, state, or local statute, ordinance, or
77 regulation.

78 G. Continuation of permit coverage.

79 1. Permit coverage shall expire at the end of its term. However, expiring permit coverages
80 are automatically continued if the owner has submitted a complete registration statement
81 at least ~~30~~60 days prior to the expiration date of the permit, or a later submittal established
82 by the ~~board~~department, which cannot extend beyond the expiration date of the original
83 permit. The permittee is authorized to continue to discharge until such time as the
84 ~~board~~department either:

- 85 a. Issues coverage to the owner under this general permit; or
- 86 b. Notifies the owner that the discharge is not eligible for coverage under this general
87 permit.

88 2. When the owner that was covered under the expiring or expired general permit has
89 violated or is violating the conditions of that permit, the ~~board~~department may choose to
90 do any or all of the following:

- 91 a. Initiate enforcement action based upon the general permit coverage that has been
92 continued;
- 93 b. Issue a notice of intent to deny coverage under the ~~reissued~~amended general
94 permit. If the general permit coverage is denied, the owner would then be required to
95 cease the discharges authorized by the continued general permit coverage or be
96 subject to enforcement action for discharging without a permit;
- 97 c. Issue a VPDES individual permit with appropriate conditions; or
- 98 d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

99 **9VAC25-196-60. Registration statement.**

100 A. Deadlines for submitting registration statements. The owner seeking coverage under this
101 general permit shall submit a complete VPDES general permit registration statement in
102 accordance with this ~~section~~ chapter, which shall serve as a notice of intent for coverage under
103 the VPDES general permit regulation for noncontact cooling water discharges of 50,000 gallons
104 per day or less.

105 1. New facilities. Any owner proposing a new discharge shall submit a complete
106 registration statement at least ~~30~~60 days prior to the date planned for commencing
107 operation of the new discharge.

108 2. Existing facilities.

109 a. Any owner covered by a VPDES individual permit who is proposing to be covered
110 by this general permit shall submit a complete registration statement at least ~~24~~240
111 days prior to the expiration date of the VPDES individual permit or a later submittal
112 established by the department.

113 b. Any owner that was authorized to discharge under the expiring or expired VPDES
114 general permit for noncontact cooling water discharges of 50,000 gallons per day or
115 less, and that intends to continue coverage under this general permit shall submit a
116 complete registration statement to the ~~board~~department at least ~~30~~60 days prior to the
117 expiration date of the existing permit or a later submittal established by the
118 ~~board~~department.

119 B. Late registration statements. Registration statements will be accepted after the expiration
120 date of the general permit, but authorization to discharge will not be retroactive.

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

122 1. Facility name and address, owner name, mailing address, telephone number, and email
123 address (if available);

124 2. Operator name, mailing address, telephone number, and email address (if available) if
125 different from owner;

126 3. State Corporation Commission entity identification number if the facility is required to
127 obtain an entity identification number by law.

128 ~~3-4.~~ Current VPDES permit registration number (if applicable);

129 ~~4-5.~~ List of point source discharges that are not composed entirely of cooling water;

130 ~~5-6.~~ List of type and size (tons) of cooling equipment or noncontact cooling water
131 processes;

132 ~~6-7.~~ The following information if any chemical or nonchemical treatment is employed in
133 each cooling water system:

- 134 a. Description of the treatment to be employed (both chemical and nonchemical) and
135 its purpose; for chemical additives other than chlorine, provide the information
136 prescribed in subdivisions 67 b, c, d, e, and f;
137 b. Name and manufacturer of each additive used;
138 c. List of active ingredients and percent composition of each additive;
139 d. Proposed dosing schedule and quantity of chemical usage, and either an
140 engineering analysis or a technical evaluation of the active ingredients to determine
141 the discharge concentration of each contaminant;
142 e. Available aquatic toxicity information for each proposed additive used;
143 f. Any other information such as product or constituent degradation, fate, transport,
144 synergies, bioavailability, etc., that will aid the ~~board~~department with the toxicity
145 evaluation of the discharge; and
146 g. Safety data sheet for each proposed additive;

147 7-8. Description of any type of treatment or retention being provided to the wastewater
148 before discharge (i.e., retention ponds, settling ponds, etc.);

149 8-9. A schematic drawing of the cooling water equipment that shows the source of the
150 cooling water, its flow through the facility, and each noncontact cooling water discharge
151 point;

152 9-10. A USGS 7.5 minute topographic map or equivalent computer generated map
153 extending to at least one mile beyond the property boundary. The map must show the
154 outline of the facility and the location of each of its existing and proposed intake and
155 discharge points, and must include all springs, rivers and other surface water bodies;

156 10-11. The following discharge information:

- 157 a. A list of all cooling water discharges identified by a unique number, latitude, and
158 longitude;
159 b. The source of cooling water for each discharge;
160 c. An estimate of the maximum daily flow in gallons per day for each discharge;
161 d. The name of the waterbody receiving direct discharge or discharge through the
162 municipal separate storm sewer system (MS4); and
163 e. The duration and frequency of the discharge for each separate discharge point;

164 11-12. A determination of whether the facility will discharge to a MS4. If the facility
165 discharges to a MS4, the facility owner must notify the owner of the MS4 of the existence
166 of the discharge at the time of registration under this permit and include that notification
167 with the registration statement. The notice shall include the following information: the
168 name of the facility, a contact person and contact information (telephone number and
169 email), the location of the discharge, the nature of the discharge, and the facility's VPDES
170 general permit registration number if a reissuance; and

171 13. The following cooling water intake structure information:

- 172 a. A determination of the cooling water intake source (e.g., groundwater, surface
173 water, third party supplier).
174 b. For surface water intakes or non-potable surface water received from a third party
175 supplier, the following information:
176 (1) Source water physical data (water body description, hydrology, chemistry, and area
177 of influence of intake structure).
178 (2) Cooling water intake structure data (screen size, through screen velocity,
179 configuration of intake, flows, a water balance diagram, and typical operations).

180 (3) Source water baseline biological characterization data (any available studies).
181 (4) Cooling water system data (configuration of the cooling water system and water
182 reuse).

183 (5) Operational status (description of current and future production schedules).

184 c. For hydroelectric facilities, the following calculation:

185 (1) A water-use efficiency calculation of megawatts produced in megawatt hours
186 (MWh) divided by the cooling water used in billion gallons per day (BGD).

187 42.14. The following certification:

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

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

197 E. The registration statement shall be delivered by either postal or electronic mail to the DEQ
198 regional office serving the area where the facility is located. Following notification from the
199 department of the start date for the required electronic submission of Notices of Intent to discharge
200 forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted
201 after that date shall be electronically submitted to the department in compliance with this section
202 and 9VAC25-31-1020. There shall be at least three months' notice provided between the
203 notification from the department and the date after which such forms must be submitted
204 electronically.

205 **9VAC25-196-70. General permit.**

206 Any owner whose registration statement is accepted by the ~~board~~department will receive
207 coverage under the following permit and shall comply with the requirements therein and be
208 subject to all requirements of 9VAC25-31.

209 General Permit No: VAG25
210 Effective Date: ~~March 2~~April 1, 20182023
211 Expiration Date: March 31, 20232028

212 GENERAL PERMIT FOR NONCONTACT COOLING WATER DISCHARGES OF 50,000
213 GALLONS PER DAY OR LESS

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

216 In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the
217 State Water Control Law and regulations adopted pursuant thereto, owners of noncontact cooling
218 water discharges of 50,000 gallons per day or less are authorized to discharge to surface waters
219 within the boundaries of the Commonwealth of Virginia, except Class V stockable trout waters,
220 Class VI natural trout waters, and those specifically named in board regulations that prohibit such
221 discharges. Chlorine or any other halogen compounds shall not be used for disinfection or other
222 treatment purposes, including biocide applications, for any discharges to waters containing

223 endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality
 224 Standards.

225 The authorized discharge shall be in accordance with the information submitted with the
 226 registration statement, this cover page, Part I - Effluent Limitations, and Monitoring Requirements,
 227 Special Conditions, and Part II - Conditions Applicable to all VPDES Permits, as set forth in this
 228 general permit.

229 Part I

230 Effluent Limitations, Monitoring Requirements, Special Conditions

231 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

232 1. Effluent limitations and monitoring requirements for discharges to freshwater receiving
 233 waterbodies. Such discharges shall be limited and monitored by the permittee as specified
 234 below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	(1)	NA	1/3 Months	Immersion Stabilization
pH (SU)	9.0 ⁽²⁾	6.0 ⁽²⁾	1/3 Months	Grab
Ammonia-N ⁽³⁾ (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine ⁽³⁾⁽⁴⁾ (mg/l)	Nondetectable 0.011	NA	1/3 Months	Grab
Total Recoverable Copper ⁽⁴⁾ (µg/l)	9.0	NA	1/3 Months	Grab
Total Recoverable Zinc ⁽⁴⁾ (µg/l)	120	NA	1/3 Months	Grab
Total Recoverable Silver ^{(4), (5)} (µg/l)	3.4	NA	1/3 Months	Grab
Total Phosphorus ⁽⁶⁾ (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required
 NA = Not applicable
 1/3 Months = the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December

- (1) The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters. The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.
- (2) Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.
- (3) Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls directly discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.
- (4) A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

Material Max QL (µg/l)

Copper	1.0 µg/l
Chlorine	0.1 mg/l
Zinc	50.0 µg/l
Silver	1.0 µg/l

Quality control/assurance information shall be submitted to document that the required QL has been attained.

(5) Silver monitoring is only required where a Cu/Ag anode is used.

(6) Phosphorus monitoring is only required where an additive containing phosphorus is used.

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2. Effluent limitations and monitoring requirements for discharges to saltwater receiving waterbodies. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate

Temperature (°C)	(1)	NA	1/3 Months	Immersion Stabilization
pH (SU)	9.0 ⁽²⁾	6.0 ⁽²⁾	1/3 Months	Grab
Ammonia-N ⁽³⁾ (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine Chlorine Producing Oxidant ⁽³⁾⁽⁴⁾ (mg/l)	Nondetectable 0.0075	NA	1/3 Months	Grab
Total Recoverable Copper ⁽⁴⁾ (µg/l)	6.0	NA	1/3 Months	Grab
Total Recoverable Zinc ⁽⁴⁾ (µg/l)	81	NA	1/3 Months	Grab
Total Recoverable Silver ^{(4), (5)} (µg/l)	1.9	NA	1/3 Months	Grab
Total Phosphorus ⁽⁶⁾ (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required
 NA = Not applicable

1/3 Months = the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December

(1)The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.

(2)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

(3)Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

(4)A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

Material	Max QL (µg/l)
Copper	1.0 µg/l

Chlorine	0.1 mg/l
Zinc	50.0 µg/l
Silver	1.0 µg/l

Quality control/assurance information shall be submitted to document that the required QL has been attained.

⁽⁵⁾Silver monitoring is only required where a Cu/Ag anode is used.

⁽⁶⁾Phosphorus monitoring is only required where an additive containing phosphorus is used.

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B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. No discharges other than cooling water, as defined, are permitted under this general permit.
3. The use of any chemical additives not identified in the registration statement, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:
 - a. Describe the chemical or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in subdivisions 3 b, c, d, e, and f;
 - b. Provide the name and manufacturer of each additive used;
 - c. Provide a list of active ingredients and percentage of composition;
 - d. Give the proposed schedule and quantity of chemical usage, and provide either an engineering analysis or a technical evaluation of the active ingredients to determine the concentration in the discharge;
 - e. Attach available aquatic toxicity information for each additive proposed for use;
 - f. Attach any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the ~~board~~ department with the toxicity evaluation for the discharge; and
 - g. Attach a safety data sheet for each proposed additive.
4. A determination of whether the facility will discharge to a MS4. If the facility discharges to a MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge at the time of registration under this permit and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and contact information (telephone number and email), the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance. Discharge monitoring reports (DMRs) required by this permit shall be submitted to both the department and the owner of the MS4.
5. Operation and maintenance manual requirement.
 - a. Within 90 days after the date of coverage under this general permit, the permittee shall develop an operation and maintenance (O&M) manual for the equipment or systems used to meet effluent limitations. The O&M manual shall be reviewed within 90 days of changes to the equipment or systems used to meet effluent limitations. The O&M manual shall be certified in accordance with Part II K of this permit. The O&M manual shall be made available for review by department personnel upon request.

275 b. This manual shall detail the practices and procedures that will be followed to ensure
276 compliance with the requirements of this permit. Within 30 days of a request by the
277 department, the current O&M manual shall be submitted to the ~~board~~department for
278 review and approval. The permittee shall operate the treatment works in accordance
279 with the O&M manual. Noncompliance with the O&M manual shall be deemed a
280 violation of the permit.

281 c. This manual shall include, but not necessarily be limited to, the following items:
282 (1) Techniques to be employed in the collection, preservation, and analysis of effluent
283 samples;
284 (2) Discussion of best management practices;
285 (3) Design, operation, routine preventative maintenance of equipment or systems used
286 to meet effluent limitations, critical spare parts inventory, and recordkeeping;
287 (4) A plan for the management or disposal of waste solids and residues, and a
288 requirement that all solids shall be handled, stored, and disposed of so as to prevent
289 a discharge to state waters; and
290 (5) Procedures for measuring and recording the duration and volume of treated
291 wastewater discharged.

292 6. The permittee shall notify the department as soon as the permittee knows or has reason
293 to believe:

294 a. That any activity has occurred or will occur which would result in the discharge, on
295 a routine or frequent basis, of any toxic pollutant which is not limited in this permit if
296 that discharge will exceed the highest of the following notification levels:
297 (1) One hundred micrograms per liter (100 µg/l);
298 (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500
299 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol;
300 and one milligram per liter (1 mg/l) for antimony;
301 (3) Five times the maximum concentration value reported for that pollutant in the permit
302 registration statement; or
303 (4) The level established by the board in accordance with 9VAC25-31-220 F.

304 b. That any activity has occurred or will occur which would result in any discharge, on
305 a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit
306 if that discharge will exceed the highest of the following notification levels:
307 (1) Five hundred micrograms per liter (500 µg/l);
308 (2) One milligram per liter (1 mg/l) for antimony;
309 (3) Ten times the maximum concentration value reported for that pollutant in the permit
310 application; or
311 (4) The level established by the board in accordance with 9VAC25-31-220 F.

312 7. Geothermal systems using groundwater and no chemical additives. Geothermal
313 systems using groundwater and no chemical additives may be eligible for reduced
314 monitoring requirements.

315 If a geothermal system was covered by the previous noncontact cooling water general
316 permit, and the monitoring results from the previous permit term demonstrate full
317 compliance with the effluent limitations, the permittee may request authorization from the
318 department to reduce the monitoring to once in the first monitoring quarter of the first year
319 of this permit term.

320 Owners of new geothermal systems, and previously unpermitted geothermal systems that
321 receive coverage under this permit shall submit monitoring results to the department for
322 the first four monitoring quarters after coverage begins. If the monitoring results
323 demonstrate full compliance with the effluent limitations, the permittee may request
324 authorization from the department to suspend monitoring for the remainder of the permit
325 term.

326 Should the permittee be issued a warning letter or notice of violation related to violation of
327 effluent limitations, or be the subject of an active enforcement action regarding effluent
328 limit violations, upon issuance of the letter or notice, or initiation of the enforcement action,
329 the monitoring frequency shall revert to 1/3 months and remain in effect until the permit's
330 expiration date.

331 8. Monitoring results shall be reported using the same number of significant digits as listed
332 in the permit. Regardless of the rounding convention used by the permittee (e.g., five
333 always rounding up or to the nearest even number), the permittee shall use the convention
334 consistently and shall ensure that consulting laboratories employed by the permittee use
335 the same convention.

336 9. Discharges to waters with an approved TMDL. Owners of facilities that are a source of
337 the specified pollutant of concern to waters where an approved TMDL has been
338 established shall implement measures and controls that are consistent with the
339 assumptions and requirements of the TMDL.

340 10. Notice of termination.

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

344 (1) Operations have ceased at the facility and there are no longer cooling water
345 discharges from the facility;

346 (2) A new owner has assumed responsibility for the facility (NOTE: A notice of
347 termination does not have to be submitted if a VPDES Change of Ownership
348 Agreement form has been submitted);

349 (3) All cooling water discharges associated with this facility have been covered by a
350 VPDES individual permit or an alternative VPDES permit; or

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

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

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

356 (2) Facility name and location;

357 (3) VPDES noncontact cooling water discharges general permit number; and

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

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

360 (b) A statement indicating that operations have ceased at the facility and there are no
361 longer noncontact cooling water discharges from the facility;

362 (c) A statement indicating that all noncontact cooling water discharges have been
363 covered by a VPDES individual permit; or

364 (d) A statement indicating that termination of coverage is being requested for another
365 reason (state the reason).

366 c. The following certification: "I certify under penalty of law that all noncontact cooling
367 water discharges from the identified facility that are authorized by this VPDES general
368 permit have been eliminated, or covered under a VPDES individual or alternative
369 permit, or that I am no longer the owner of the facility, or permit coverage should be
370 terminated for another reason listed above. I understand that by submitting this notice
371 of termination that I am no longer authorized to discharge noncontact cooling water in
372 accordance with the general permit, and that discharging pollutants in noncontact
373 cooling water to surface waters is unlawful where the discharge is not authorized by a
374 VPDES permit. I also understand that the submittal of this notice of termination does
375 not release an owner from liability for any violations of this permit or the Clean Water
376 Act."

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

378 e. The notice of termination shall be submitted to the DEQ regional office serving the
379 area where the noncontact cooling water discharge is located.

380 11. The discharges authorized by this permit shall be controlled as necessary to meet
381 applicable water quality standards.

382 12. Approval for coverage under this general permit does not relieve any owner of the
383 responsibility to comply with any other federal, state, or local statute, ordinance, or
384 regulation.

385 Part II

386 Conditions Applicable to All VPDES Permits

387 A. Monitoring.

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

390 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part
391 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless
392 other procedures have been specified in this permit.

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

396 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-
397 45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46,
398 Accreditation for Commercial Environmental Laboratories.

399 B. Records.

400 1. Records of monitoring information shall include:

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

402 b. The individuals who performed the sampling or measurements;

403 c. The dates and times analyses were performed;

404 d. The individuals who performed the analyses;

405 e. The analytical techniques or methods used; and

406 f. The results of such analyses.

407 2. Except for records of monitoring information required by this permit related to the
408 permittee's sewage sludge use and disposal activities, which shall be retained for a period
409 of at least five years, the permittee shall retain records of all monitoring information,
410 including all calibration and maintenance records and all original strip chart recordings for
411 continuous monitoring instrumentation, copies of all reports required by this permit, and

412 records of all data used to complete the registration statement for this permit, for a period
413 of at least three years from the date of the sample, measurement, report or request for
414 coverage. This period of retention shall be extended automatically during the course of
415 any unresolved litigation regarding the regulated activity or regarding control standards
416 applicable to the permittee or as requested by the ~~board~~department.

417 C. Reporting monitoring results.

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

422 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on
423 forms provided, approved or specified by the department. Following notification from the
424 department of the start date for the required electronic submission of monitoring reports,
425 as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall
426 be electronically submitted to the department in compliance with this section and 9VAC25-
427 31-1020. There shall be at least three months' notice provided between the notification
428 from the department and the date after which such forms and reports must be submitted
429 electronically.

430 3. If the permittee monitors any pollutant specifically addressed by this permit more
431 frequently than required by this permit using test procedures approved under 40 CFR Part
432 136 or using other test procedures approved by the U.S. Environmental Protection Agency
433 or using procedures specified in this permit, the results of this monitoring shall be included
434 in the calculation and reporting of the data submitted in the DMR or reporting form
435 specified by the department.

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

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

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

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

452 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or
453 deleterious substances; or

454 2. Otherwise alter the physical, chemical or biological properties of such state waters and
455 make them detrimental to the public health, to animal or aquatic life, to the use of such
456 waters for domestic or industrial consumption, for recreation, or for other uses.

457 G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a
458 discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into
459 or upon state waters in violation of Part II F, or who discharges or causes or allows a discharge

460 that may reasonably be expected to enter state waters in violation of Part II F, shall notify the
461 department (see Part II I 3) of the discharge immediately upon discovery of the discharge, but in
462 no case later than 24 hours after said discovery. A written report of the unauthorized discharge
463 shall be submitted to the department within five days of discovery of the discharge. The written
464 report shall contain:

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

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

477 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge
478 including a bypass or upset should occur from a treatment works and the discharge enters or
479 could be expected to enter state waters, the permittee shall promptly notify (see Part II I 3), in no
480 case later than 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This
481 notification shall provide all available details of the incident, including any adverse effects on
482 aquatic life and the known number of fish killed. The permittee shall reduce the report to writing
483 and shall submit it to the department within five days of discovery of the discharge in accordance
484 with Part II I 1 b. Unusual and extraordinary discharges include any discharge resulting from:

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

489 I. Reports of noncompliance.

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

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

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

510 NOTE:3. The immediate (within 24 hours) reports required in Parts II G, H and I mayshall
511 be made to the department's regional office. Reports may be made by telephone, FAX, or
512 online at
513 ~~http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReporti~~
514 ~~ngForm.aspx~~https://www.deq.virginia.gov/get-involved/pollution-response (online
515 reporting preferred). For reports outside normal working hours, ~~leave a message and this~~
516 ~~shall fulfill the immediate reporting requirement~~the online portal shall be used. For
517 emergencies, call the Virginia Department of Emergency Management's Emergency
518 Operations Center (24-hours)Services maintains a 24-hour telephone service at 1-800-
519 468-8892.

520 3.4. Where the permittee becomes aware that it failed to submit any relevant facts in a
521 permit registration statement or submitted incorrect information in a permit registration
522 statement or in any report to the department, it shall promptly submit such facts or
523 information.

524 J. Notice of planned changes.

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

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

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

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

535 b. The alteration or addition could significantly change the nature or increase the
536 quantity of pollutants discharged. This notification applies to pollutants which are
537 subject neither to effluent limitations nor to notification requirements under Part I B 6;
538 or

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

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

547 K. Signatory requirements.

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

549 a. For a corporation: by a responsible corporate officer. For the purpose of this section,
550 a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-

551 president of the corporation in charge of a principal business function, or any other
552 person who performs similar policy-making or decision-making functions for the
553 corporation, or (ii) the manager of one or more manufacturing, production, or operating
554 facilities, provided the manager is authorized to make management decisions that
555 govern the operation of the regulated facility including having the explicit or implicit
556 duty of making major capital investment recommendations, and initiating and directing
557 other comprehensive measures to assure long-term environmental compliance with
558 environmental laws and regulations; the manager can ensure that the necessary
559 systems are established or actions taken to gather complete and accurate information
560 for permit registration requirements; and where authority to sign documents has been
561 assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

580 c. The written authorization is submitted to the department.

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

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

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

596 L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit
597 noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act,
598 except that noncompliance with certain provisions of this permit may constitute a violation of the

599 State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for
600 enforcement action; for permit coverage termination or denial of a permit coverage renewal.

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

606 M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after
607 the expiration date of this permit, the permittee shall apply for and obtain coverage under a new
608 permit. All permittees with currently effective permit coverage shall submit a new registration
609 statement at least ~~30~~60 days before the expiration date of the existing permit, unless permission
610 for a later date has been granted by the ~~board~~department. The ~~board~~department shall not grant
611 permission for registration statements to be submitted later than the expiration date of the existing
612 permit.

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

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

622 P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude
623 the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or
624 penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-
625 44.34:23 of the State Water Control Law.

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

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

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

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

643 U. Bypass.

644 1. "Bypass" means the intentional diversion of waste streams from any portion of a
645 treatment facility. The permittee may allow any bypass to occur which does not cause
646 effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure

647 efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U
648 3.

649 2. Notice.

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

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

655 3. Prohibition of bypass.

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

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

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

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

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

670 V. Upset.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

703 Y. Transfer of permit coverage.

704 1. Permit coverage is not transferable to any person except after notice to the department.

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

706 a. The current permittee notifies the department within 30 days of the transfer of the
707 title to the facility or property;

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

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

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

718 FORMS (9VAC25-196)

719 Registration Statement for the VPDES General Permit For Noncontact Cooling Water
720 Discharges of 50,000 Gallons Per Day or Less, Form VAG25-RS (rev. 1/2018)

721 VPDES Change of Ownership Agreement Form (rev. 4/2018)

722 VPDES General Permit for Noncontact Cooling Water (VAG25) Notice of Termination (rev.
723 1/2021)

724 Water Division Permit Application Fee Form, 9VAC25-20 Form 5 (rev. 10/2018)



townhall.virginia.gov

Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC25-196
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less
Action title	Proposed reissuance and amendment of the VPDES general permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less
Date this document prepared	May 11, 2022

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action addresses the proposed reissuance of the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less. The existing general permit regulation establishes limitations, monitoring requirements and other special conditions for point source discharges of noncontact cooling water of 50,000 gallons per day or less to surface waters in order to maintain surface water quality. This regulatory action is proposed to amend and reissue the existing general permit, which expires on March 1, 2023. A periodic/small business impact review in support of this regulation has been conducted separately.

Mandate and Impetus

Identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This regulation (9VAC25-196) constitutes a VPDES general permit administered by Virginia DEQ, a U.S. EPA authorized permitting authority under CWA § 402(b). Under CWA § 402(b)(1)(B), VPDES permits must be for fixed terms not to exceed five years. The existing general permit expires on March 1, 2023 and must be reissued for another term to remain available to permittees. In addition, internal staff review and TAC meeting input have identified areas where the general permit could be updated and potentially improved.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Board: State Water Control Board
 EPA (U.S. EPA): United States Environmental Protection Agency
 DEQ: Department of Environmental Quality
 NOIRA: Notice of Intended Regulatory Action
 NPDES: National Pollutant Discharge Elimination System
 USC: United States Code
 VAC: Virginia Administrative Code
 VPDES: Virginia Pollutant Discharge Elimination System

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This proposed regulatory action is needed in order to establish permitting requirements for discharges of noncontact cooling water in quantities of 50,000 gallons per day or less to surface waters in order to maintain surface water quality and thus protect the health, safety and welfare of citizens. The existing general permit expires on March 1, 2023 and must be reissued to cover existing and new facilities that use processes that require the use of noncontact cooling water.

Other issues that may need consideration are effluent limits, clarifying definitions, review of water quality standards.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The general permit will establish limitations and monitoring requirements for point source discharges of noncontact cooling water in quantities of 50,000 gallons per day or less to surface waters. The effluent limits, monitoring requirements and special conditions in the general permit will be reviewed to ensure that the permit is still protective of water quality. The primary issue that needs to be addressed is that the existing general permit expires on March 1, 2023 and must be reissued in order to continue making it available after that date. Some issues that may need consideration are effluent limits (including making chlorine non-detectable limit compatible with EPA reporting requirements), clarifying definitions, review of water quality standards, and any other issues that arise as a result of this NOIRA and during technical advisory committee meetings.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantages to the public, permittees and the agency of reissuing this general permit are that a Virginia Pollutant Discharge Elimination System (VPDES) General Permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters. In addition, the continued availability of this general permit avoids the increased cost and more complicated application process for permittees associated with issuing an individual permit, and makes permit administration more reasonable for DEQ. There are no known disadvantages.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a

rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

There are no other state agencies particularly affected by the proposed regulation.

Localities Particularly Affected:

There are no localities particularly affected by the proposed regulation.

Other Entities Particularly Affected:

There are no other entities particularly affected by the proposed regulation.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This general permit does not predominantly apply to small businesses, rather, this general permit regulation governs point source discharges of noncontact cooling water of 50,000 gallons per day or less to surface waters. Nevertheless, the reissuance of this VPDES general permit accomplishes the objectives of applicable law and minimizes the application burden and permit implementations costs to affected small business owners. Without the general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application, implementation and compliance costs.

Public Comment Received

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Gail Pean	<p>Concerns regarding air quality emissions, water quality emissions, and tracking specific emission within Loudoun County, VA. Concerns that the locality is approving unlimited water usage for cooling and stated that the public must be informed of the cost of emission cleanup. Other concerns were raised concerning tax revenue and cleanup costs, as well as raising concerns for sharing environmental impacts studies with the public and with local newspapers.</p>	<p>The purpose of these regulations are limited to the general permit regulation governs point source discharges of noncontact cooling water of 50,000 gallons per day or less to surface waters.</p> <p>The State Water Control Board does not regulate air quality.</p>

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Joseph B. Bryan, P.O. Box 1105, Richmond, VA 23218-1105, 804.659.2659, fax (804) 698 4178 (please ensure recipient [Joseph B. Bryan] is on the fax or cover page of the fax) and joseph.bryan@deg.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-196-10. Definitions.		"Board" means the State Water Control Board.	<p><i>Revised definition of "Board" as follows:</i></p> <p>"Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, "Board" means the "Department of Environmental Quality".</p> <p><i>SB 657 was passed during the 2022 Session of the General Assembly and limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations, and transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. Changes have been made to the regulation to conform to changes in Code.</i></p>
9VAC25-196-15. Applicability of incorporated references based on the dates that they became effective.		Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, 2017.	<p><i>Revised date to "July 1, 2021" based on the most recent federal update prior to this reissuance.</i></p>
9VAC25-196-30. Delegation of authority.		The director, or an authorized representative, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.	<p><i>Section repealed in accordance with SB 657 passed during the 2022 Session of the General Assembly, as noted above.</i></p>
9VAC25-196-40. Effective date of the permit		This general permit will become effective on March 2, 2018. This general permit will expire on March 1, 2023.	This general permit will become effective on April 1, 2023. This general permit will expire on March 31, 2028.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<i>Amended dates to reflect new 5-year term. Started term at the beginning of the month consistent with DEQ VPDES monitoring policy.</i>
9VAC25-196-50. Authorization to discharge. B.3.		B.3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or	<i>Struck "or" and moved it to the end of section 9VAC25-196-50.B.4 due to the addition of section 9VAC25-196-50.B.5</i>
9VAC25-196-50. Authorization to discharge. B.4.		B.4. The discharge is not consistent with the assumptions and requirements of an approved TMDL.	<i>Inserted "or" are the end of the section due to the addition of section 9VAC25-196-50.B.5</i>
9VAC25-196-50. Authorization to discharge. B.5.	B.5.	None.	B.5. The facility is subject to the substantive provisions of 40 CFR 125 Subparts I or J. <i>Added section to indicate that facilities subject to the referenced federal regulations are not eligible for coverage under this general permit.</i>
9VAC25-196-50. Authorization to discharge. G.1.		G.1. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 30 days prior to the expiration date of the permit, or a later submittal established by the board, which cannot extend beyond the expiration date of the original permit.	<i>Replaced "30 days" with "60 days" to be consistent with other general permits.</i>
9VAC25-196-50. Authorization to discharge. G.2.b.		G.2.b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit or be subject to enforcement action for discharging without a permit;	<i>Replaced "reissued" with "amended".</i> <i>Added "coverage" to "... the continued general permit ..."</i>
9VAC25-196-60. Registration Statement.		A. Deadlines for submitting registration statements. The owner seeking coverage under this general permit	<i>Replaced "section" with "chapter".</i> <i>Added "regulation" following "VPDES general permit"</i>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
A.		shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES general permit for noncontact cooling water discharges of 50,000 gallons per day or less.	
9VAC25-196-60. Registration Statement. A.1.		A.1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge.	<i>Replaced "30 days" with "60 days" to be consistent with other general permits.</i>
9VAC25-196-60. Registration Statement. A.2.a.		A.2.a. Any owner covered by a VPDES individual permit who is proposing to be covered by this general permit shall submit a complete registration statement at least 210 days prior to the expiration date of the VPDES individual permit.	<i>Replaced "210 days" with "240 days" to be consistent with other general permits. Added "or a later submittal established by the board" which is consistent with other general permits and provides flexibility to address submittals later than 240 days prior to the expiration date of the VPDES individual permit.</i>
9VAC25-196-60. Registration Statement. A.2.b.		A.2.b. Any owner that was authorized to discharge under the expiring or expired VPDES general permit and that intends to continue coverage under this general permit shall submit a complete registration statement to the board at least 30 days prior to the expiration date of the existing general permit or a later submittal established by the board.	<i>Added "for noncontact cooling water discharges of 50,000 gallons per day or less," after "VPDES general permit". Replaced "30 days" with "60 days" to be consistent with other general permits.</i>
9VAC25-196-60. Registration Statement.	C.3.	None.	<i>C.3. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law. Inserted this registration statement requirement to be consistent with other general permits. It ensures the</i>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p><i>facility is able to conduct business in Virginia and aides potential enforcement.</i></p> <p><i>Existing sections C.3 through C.12 renumbered accordingly.</i></p>
<p>9VAC25-196-60. Registration Statement. C.11.</p>	<p>C.12.</p>	<p>MS4 notification:</p> <p>"... The notice shall include the following information: the name of the facility, a contact person and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance; ..."</p>	<p><i>Added the requirement to provide an email address to the owner of the MS4 as part of the notification:</i></p> <p>"The notice shall include the following information: the name of the facility, a contact person and contact information (telephone number and email), the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance."</p>
<p>9VAC25-196-60. Registration Statement.</p>	<p>C.13.</p>	<p>None.</p>	<p>"C.13. The following cooling water intake structure information:"</p> <p><i>Section 316(b) of the Clean Water Act (CWA) requires that "the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact."</i></p> <p><i>Under state and federal regulations cooling water intake requirements for facilities covered under this general permit must meet the requirements of CWA § 316(b) on a case-by-case, best professional judgement (BPJ) basis.</i></p> <p><i>Thus, general cooling water intake structure information is now required on the registration statement, as applicable, in order to inform any necessary 316(b) Best Technology Available (BTA) determination.</i></p>
<p>9VAC25-196-60. Registration Statement.</p>	<p>C.13.a.</p>	<p>None.</p>	<p>"C.13.a. A determination of the cooling water intake source (i.e. groundwater, surface water, third party supplier)."</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p><i>Identifies the source of the cooling water to the facility, which will indicate whether a 316(b) BPJ decision will be necessary.</i></p>
<p>9VAC25-196-60. Registration Statement.</p>	<p>C.13.b.</p>	<p>None.</p>	<p>"C.13.b. For surface water intakes or non-potable surface water received from a third party supplier, the following information:</p> <p>(1) Source water physical data (water body description, hydrology, chemistry, and area of influence of intake structure). (2) Cooling water intake structure data (screen size, through screen velocity, configuration of intake, flows, a water balance diagram, and typical operations). (3) Source water baseline biological characterization data (any available studies). (4) Cooling water system data (configuration of the cooling water system and water reuse). (5) Operational status (description of current and future production schedules)."</p> <p><i>Gathers general information regarding the cooling water intake structures of applicable facilities. This information will inform 316(b) BPJ decisions.</i></p>
<p>9VAC25-196-60. Registration Statement.</p>	<p>C.13.c.</p>	<p>None.</p>	<p>"C.13.c. For hydroelectric facilities, the following calculation: (1) A water-use efficiency calculation of megawatts produced in megawatt hours (MWh) divided by the cooling water used in billion gallons per day (BGD)."</p> <p><i>For hydropower facilities, a water use efficiency calculation is required in addition to information under C.13.b. This calculation will inform 316(b) BPJ decisions for hydropower facilities.</i></p> <p><i>Per EPA's Framework for Considering Existing Hydroelectric Facility Technologies in Establishing</i></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Case-by-Case, BPJ 316(b) NPDES Permit Conditions, a water use efficiency ratio greater than or equal to 460 megawatt hours per billion gallons per day (MWh/BGD) indicates that a hydroelectric plant has a cooling water withdrawal efficiency comparable to or better than closed-cycle cooling at steam electric power plants. The framework document concludes that in such cases, consistent with the Existing Facilities Rule BPJ provisions in 125.90(b), the facility would be deemed to meet BTA requirements to minimize entrainment and impingement mortality.</p>
<p>9VAC25-196-60. Registration Statement. E.</p>		<p>E. The registration statement shall be delivered by either postal or electronic mail to the DEQ regional office serving the area where the facility is located.</p>	<p>Added the following contingent e-reporting language:</p> <p>"Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically."</p> <p><i>E-reporting is required by federal regulation (see 80 FR 64064; 10/22/2015 and 85 FR 69189; 11/2/2020) and state regulation (9VAC25-31-1020).</i></p>
<p>9VAC25-196-70. General permit.</p>		<p>Effective and expiration dates.</p>	<p><i>Revised as indicated above.</i></p>
<p>9VAC25-196-70. General permit.</p>		<p>Second paragraph: The authorized discharge shall be in accordance with the information submitted</p>	<p><i>Revised as below:</i></p> <p>"The authorized discharge shall be in accordance with the information submitted with the registration</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		with the registration statement, this cover page, Part I - Effluent Limitations and Monitoring Requirements, and Part II - Conditions Applicable to all VPDES Permits, as set forth in this general permit.	statement, this cover page, Part I - Effluent Limitations, Monitoring Requirements, Special Conditions, and Part II - Conditions Applicable to all VPDES Permits, as set forth in this general permit."
9VAC25-196-70. General permit. Part I A 1. Effluent Limitations and Monitoring Requirements for Freshwater		Total Residual Chlorine limit – Nondetectable	Total Residual Chlorine limit – 0.011 mg/L <i>The numerical chlorine limitation from the Water Quality Standards is now listed rather than "nondetectable". The chronic criteria for TRC in freshwater is 0.011 mg/L.</i> <i>Reporting requirements for permittees remain unchanged.</i> <i>Reference to footnote (4) was added, indicating the quantification level (QL) for chlorine.</i>
9VAC25-196-70. General permit. Part I A 1. Effluent Limitations and Monitoring Requirements for Freshwater		Footnote (3) Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls directly discharging to surface waters where ...	<i>Revised Footnote (3) to remove reference to "nondetectable" in accordance with the above as follows:</i> "Chlorine limitation and monitoring only apply to outfalls directly discharging to surface waters where ..."
9VAC25-196-70. General permit. Part I A 1. Effluent Limitations and Monitoring Requirements for Freshwater		Footnote (4) – QL table	<i>Revised Footnote (4) QL table to add the chlorine QL and list the units of each material alongside the concentration.</i>
9VAC25-196-70. General permit. Part I A 2.		Total Residual Chlorine limit – Nondetectable	Chlorine Producing Oxidant limit – 0.0075 mg/L <i>The chlorine parameter in saltwater is Chlorine Producing Oxidant.</i>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
Effluent Limitations and Monitoring Requirements for Saltwater			<p><i>The numerical chlorine limitation from the Water Quality Standards is now listed rather than "nondetectable". The chronic criteria for chlorine in saltwater is 0.0075 mg/L.</i></p> <p><i>Reporting requirements for permittees remain unchanged.</i></p> <p><i>Reference to footnote (4) was added, indicating the quantification level (QL) for chlorine.</i></p>
<p>9VAC25-196-70. General permit. Part I A 2.</p> <p>Effluent Limitations and Monitoring Requirements for Saltwater</p>		<p>Footnote (3)</p> <p>Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls directly discharging to surface waters where ...</p>	<p><i>Revised Footnote (3) to remove reference to "nondetectable" in accordance with the above as follows:</i></p> <p><i>"Chlorine limitation and monitoring only apply to outfalls directly discharging to surface waters where ..."</i></p>
<p>9VAC25-196-70. General permit. Part I A 2.</p> <p>Effluent Limitations and Monitoring Requirements for Saltwater</p>		<p>Footnote (4) – QL table</p>	<p><i>Revised Footnote (4) QL table to add the chlorine QL and list the units of each material alongside the concentration.</i></p>
<p>9VAC25-196-70. General permit. Part I B 4 Special Conditions</p>		<p>Part I B 4. MS4 notification</p> <p>... The notice shall include the following information: the name of the facility, a contact person and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance ...</p>	<p><i>Added the requirement to provide an email address to the owner of the MS4 as part of the notification:</i></p> <p><i>"The notice shall include the following information: the name of the facility, a contact person and contact information (telephone number and email), the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance."</i></p>
<p>9VAC25-196-70. General permit.</p>		<p>Part II C 2. Monitoring results shall be reported on a Discharge Monitoring Report</p>	<p><i>Added the following contingent e-reporting language:</i></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
Part II C 2. Reporting Monitoring Results		(DMR) or on forms provided, approved or specified by the department.	<p>"Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms must be submitted electronically."</p> <p><i>E-reporting is required by federal regulation (see 80 FR 64064; 10/22/2015 and 85 FR 69189; 11/2/2020) and state regulation (9VAC25-31-1020).</i></p>
9VAC25-196-70. General permit. Part II D. Duty to Provide Information		<p>Part II D.</p> <p>... 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 ...</p>	<p><i>Replaced "his discharge" with "the permittee's discharge".</i></p>
9VAC25-196-70. General permit. Part II G. Reports of Unauthorized discharges		<p>Part II G. 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 ...</p>	<p><i>Added reference to Part II I 3 as follows:</i></p> <p><i>"... shall notify the department (see Part II I 3) of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery ..."</i></p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p>9VAC25-196-70. General permit. Part II H. Reports of Unusual or Extraordinary Discharges</p>		<p>Part II H. 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 ...</p> <p>... 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 ...</p>	<p><i>Added reference to Part II I 3 and removed "by telephone" as follows:</i></p> <p>"... the permittee shall promptly notify (see Part II I 3), in no case later than 24 hours, the department after the discovery of the discharge ...</p> <p><i>Corrected reference to Part II I 2 with Part II I 1 b as follows:</i></p> <p>"... The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 1 b."</p>
<p>9VAC25-196-70. General permit. Part II I 2. Reports of Noncompliance</p>		<p>Part II I 2. The permittee shall report all instances of noncompliance not reported under Part 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.</p>	<p><i>Corrected references to Part II I 2 as follows:</i></p> <p>"The permittee shall report all instances of noncompliance not reported under Part II I 1, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 1 b."</p>
<p>9VAC25-196-70. General permit. Reports of Noncompliance</p>	<p>Part II I 3.</p>	<p>Part II I 2.</p> <p>... "NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReportingForm.aspx. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia</p>	<p><i>Renumbered the existing "NOTE" to be item 3 and modified the language to be consistent with other general permits as follows:</i></p> <p>"The immediate (within 24 hours) reports required in Parts II G, H and I shall be made to the department's regional office. Reports may be made by telephone, FAX, or online at https://www.deq.virginia.gov/get-involved/pollution-response (online reporting preferred). For reports outside normal working hours, the online portal shall be used. For emergencies, call the Virginia Department of Emergency Management's Emergency Operations Center (24-hours) at 1-800-468-8892."</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
		Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892."	<i>Existing item 3 renumbered as item 4.</i>
9VAC25-196-70. General Permit. Part II M. Duty to Reapply.		Part II M. "All permittees with currently effective permit coverage shall submit a new registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board."	<i>Replaced "30 days" with "60 days" to be consistent with other general permits.</i>

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This general permit applies to point source discharges of noncontact cooling water of 50,000 gallons per day or less to surface waters and has been designed to minimize burden while achieving a level of water quality protection consistent with state and federal requirements. This regulatory action does not address and will have no direct impact on 1) the authority and rights of parents, 2) economic self-sufficiency, self-pride, or assumption of familial responsibilities, 3) marital commitments, or 4) disposable family income.

FACT SHEET
REISSUANCE OF A GENERAL VPDES PERMIT FOR NON-CONTACT COOLING WATER DISCHARGES OF 50,000 GALLONS PER DAY OR LESS

The Virginia State Water Control Board has under consideration the reissuance of a VPDES general permit for point source discharges of non-contact cooling water to surface waters of the Commonwealth of Virginia. This general permit will replace the existing non-contact cooling water general permit, VAG25, which expires March 1, 2023. Owners covered under the expiring general permit who wish to continue to discharge under a general permit must register for coverage under the new general permit.

Permit Number: VAG25

Name of Permittee: Any owner of a qualifying facility discharging non-contact cooling water in the Commonwealth of Virginia agreeing to be regulated under the terms of this general permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except Class V stockable waters, Class VI natural trout waters, and those specifically named in Board Regulations which prohibit such discharges. Discharge to surface waters may be through a municipal separate storm sewer system. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

On the basis of preliminary review and application of lawful standards and regulations, the State Water Control Board proposes to reissue the VPDES general permit subject to certain conditions and has prepared a draft permit. The Board has determined that this category of discharges is appropriately controlled under a general permit. Non-contact cooling water discharges are similar in composition even though they may not be generated by a single industrial category or point source. The draft general permit requires that all covered facilities meet standardized effluent limitations, monitoring requirements, special conditions, and Water Quality Standards (9VAC25-260).

Persons may comment in writing on the proposed reissuance of the general permit within 60 days from the start of the public comment period. Comments should be addressed to the contact person listed below. Comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. Only those comments within the comment period will be considered by the Board.

All pertinent information is on file and may be inspected, and arrangements made for copying by contacting:

Joseph Bryan
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218
Tel: (804) 659-2659
Joseph.Bryan@deq.virginia.gov

A public hearing will be held on this draft permit. Notice of the public hearing will be published in newspapers, on the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov, and in the Virginia Register. Following the public comment period, the Board will make its determinations regarding the proposed permit action.

1.0 Activities Covered By This General Permit And Sources Of Wastewater

This general permit covers point source discharges of 50,000 gallons per day or less of non-contact cooling water and cooling equipment blowdown to surface waters. Discharge to surface waters may be through a municipal separate storm sewer system (MS4).

"Cooling Water" means water used to reduce temperature which does not come into direct contact with any raw product, intermediate product (other than heat) or finished product. For the purposes of this general permit, cooling water can be generated from any cooling equipment blowdown or produced as a result of any non-contact cooling process through either a single pass (once through) or recirculating system.

"Blowdown" is a discharge of recirculating water from any cooling equipment or cooling process in order to maintain a desired quality of the recirculating water. Water which is used for cooling purposes and which commingles with a wastewater or process fluid becomes process wastewater and is not covered by this general permit. Boiler blowdown and storm water discharges are also excluded from the coverage of this general permit.

This general permit is not applicable for a category where federal effluent guidelines have been promulgated, such as steam electric generating stations (see 40 CFR Part 423).

The cooling water's source can be a well, surface water, or the potable water supply. The water is used in a process for cooling. The temperature control system operates so that the cooling water does not come into direct contact with the raw materials. The primary pollutant associated with cooling equipment blowdown and non-contact cooling water discharges is the heat taken up by the water. In one pass cooling water facilities, after the heat transfer has taken place, the water is discharged. Once-through cooling generates relatively large volumes of water. In most cases, the water passes through the heat exchange apparatus and is discharged without chemical additives or treatment.

Other cooling equipment, such as cooling towers, use less water because they usually operate in a recycle, rather than once-through, mode. Generally associated with air conditioning units, cooling towers are used to remove heat from a fluid by evaporating water. Water is dispersed over a media or trickled through shallow pans as air is blown over it. Evaporation cools the water down to the ambient air temperature. The cooled water is then piped to a heat exchanger within the air conditioning chiller where it absorbs the heat released as Freon is condensed. The cycle is completed when the water is pumped back to the cooling tower. A certain amount of the water in the cooling equipment system must be replaced during each or several cycles in order to maintain the desired properties of the water. This type of discharge (blowdown) is usually lower in volume than the once-through cooling discharge, but it has a greater potential to contain pollutants. The reuse of water usually requires some sort of treatment to inhibit corrosion and scale build-up, to reduce biological growth, and to reduce deposition of water impurities in the system. Chemical and/or non-chemical treatment may be employed to address these problems.

Due to the concern that tributyltin compounds are not easily degradable and thus have long-lasting residual effects, and the stringent water quality standards for tributyltin (0.072 ppb in freshwater and 0.0074 ppb in saltwater), discharges that use biocides containing tributyltin will be excluded from coverage under this general permit. In addition, this general permit will not cover any cooling water discharges that use hexavalent chromium (Cr^{+6})-containing water treatment chemicals in the cooling water system. This restriction is imposed based on the provision promulgated under 40 CFR Part 749 that prohibits the use of hexavalent chromium-based water treatment chemicals in comfort cooling towers (CCT's). Although CCT's are dedicated exclusively to, and are an integral part of heating, ventilation, and air conditioning (HVAC) or refrigeration systems, it is anticipated that the majority of the cooling water discharges covered by this general permit will be generated from CCT's. In order to assure compliance with the halogen ban of 9VAC25-260-110 of the Water Quality Standards, chlorine or any other halogen compounds are not allowed to be used for disinfection or other treatment purposes, including biocide applications, for any discharges to water containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

Using chloramines to disinfect drinking water is a common practice among drinking water utilities. Ammonia is a byproduct of the use of chloramines for this purpose. Therefore, ammonia monitoring is required where the source of cooling water is disinfected using chloramines.

As a non-chemical treatment alternative, an ion generator is commonly employed in the cooling water system. DC current is passed through anodes made of copper and silver alloy. This process releases copper and silver ions into the water. The ions neutralize bacteria and algae. Other non-chemical treatment alternatives, such as magnetic descaling which reduces the scale build-up by creating alternating magnetic fields, may require alternative treatment for control of biological growth. Either a silver/copper anode unit or chlorine addition may serve this purpose.

Due to the concern that toxic effects could occur as a result of contaminated water sources from groundwater remediation wells, discharges that use groundwater remediation wells as cooling water source will be excluded from the coverage of this general permit.

The cooling water discharges normally do not include a treatment system. However, retention or settling ponds may be used to equalize the flow, lower the temperature, or to settle any possible solids that may occur in the discharge.

2.0 Revisions to the Expiring VPDES General Permit for Non-Contact Cooling Water Discharges of 50,000 GPD or Less

The date for the “Applicability of incorporated references” section (9VAC25-196-15) was revised to the most recent federal update, July 1, 2021.

The “Effective date of the permit” section (9VAC25-196-40) was revised to provide updated dates for the regulation and to align the effective and expiration dates with the permit’s quarterly monitoring periods. It should be noted that these dates were updated through the other sections of the regulation.

Added requirements to the "Registration Statement" section (9VAC25-196-60 C) regarding cooling water intake structures in order to address impingement and entrainment under §316(b), as necessary.

Added language to the "Registration Statement" section (9VAC25-196-60 E) indicating that electronic submittals of registration statements will be required in the future and that the department will notify permittees at least three months in advance of the requirement being implemented.

The Part I A, Effluent Limits and Monitoring Requirements (9VAC25-196-70) section was modified as follows:

In Parts I A 1 and I A 2, a numerical chlorine maximum discharge limitation was included in place of “nondetectable”. In Part I A 1, the freshwater total residual chlorine (TRC) chronic criteria of 0.011 mg/L was included. In Part I A 2, the saltwater chlorine producing oxidant (CPO) chronic criteria of 0.0075 mg/L was included. The associated quantification limit (QL) for chlorine was added to the footnotes of both sections.

3.0 Effluent Limitations and Monitoring Requirements

3.1 Part I A 1. Effluent Limitations and Monitoring Requirements for Discharges to Freshwater Receiving Waterbodies.

<u>Parameter</u>	<u>Limitation</u>
Flow	0.05 MGD maximum
Temperature	Maximum ⁽¹⁾
pH	6.0 minimum, 9.0 maximum ⁽²⁾
Total Residual Chlorine ⁽³⁾⁽⁴⁾	0.011 mg/L maximum
Ammonia-N ⁽³⁾	No limit, monitoring required
Total Recoverable Copper ⁽⁴⁾	9.0 µg/l maximum
Total Recoverable Zinc ⁽⁴⁾	120 µg/l maximum
Total Recoverable Silver ^(4,5)	3.4 µg/l maximum
Total Phosphorus ⁽⁶⁾	No limit, monitoring required

All monitoring is once per three months by grab sample, except for temperature which is by immersion/stabilization. Once per three months is equal to the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.

(1) The effluent temperature shall not exceed a maximum 32°C for discharges to non-tidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

(2) Where the Water Quality Standards (9 VAC 25-260-5 et seq.) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

(3) Chlorine limitation and monitoring only apply to outfalls directly discharging to surface waters and are required where either: (1) a treatment additive that contains chlorine or chlorine compounds is used, or (2) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as “<QL”. Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

(4) A specific analytical method is not specified; however a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a “[QL]” shall be reported where the actual analytical test QL is substituted for [QL].

<u>Material</u>	<u>Max QL</u>
Copper	1.0 µg/L
Chlorine	0.1 mg/L
Zinc	50.0 µg/L
Silver	1.0 µg/L

Quality control/assurance information shall be submitted to document that the required QL has been attained.

(5) Silver monitoring is only required where a Cu/Ag anode is used.

(6) Phosphorus monitoring is only required where an additive containing phosphorus is used.

3.2 Part I A 2. Effluent Limitations and Monitoring Requirements for Discharges to Saltwater Receiving Waterbodies.

<u>Parameter</u>	<u>Limitation</u>
Flow	0.05 MGD maximum
Temperature	Maximum ⁽¹⁾
pH	6.0 minimum, 9.0 maximum ⁽²⁾
Chlorine Producing Oxidant ⁽³⁾⁽⁴⁾	0.0075 mg/L maximum
Ammonia-N ⁽³⁾	No limit, monitoring required
Total Recoverable Copper ⁽⁴⁾	6.0 µg/l maximum
Total Recoverable Zinc ⁽⁴⁾	81 µg/l maximum
Total Recoverable Silver ^(4,5)	1.9 µg/l maximum
Total Phosphorus ⁽⁶⁾	No limit, monitoring required

All monitoring is once per three months by grab sample, except for temperature which is by immersion/stabilization. Once per three months is equal to the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.

(1) The effluent temperature shall not exceed a maximum 32°C for discharges to non-tidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

(2) Where the Water Quality Standards (9 VAC 25-260-5 et seq.) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

(3) Chlorine limitation and monitoring only apply to outfalls directly discharging to surface waters and are required where either: (1) a treatment additive that contains chlorine or chlorine compounds is used, or (2) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL". Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

(4) A specific analytical method is not specified; however a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

<u>Material</u>	<u>Max QL</u>
Copper	1.0 µg/L
Chlorine	0.1 mg/L
Zinc	50.0 µg/L
Silver	1.0 µg/L

Quality control/assurance information shall be submitted to document that the required QL has been attained.

(5) Silver monitoring is only required where a Cu/Ag anode is used.

(6) Phosphorus monitoring is only required where an additive containing phosphorus is used.

4.0 Basis for Effluent Limitations and Monitoring Requirements

4.1 Technology-Based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for non-contact cooling water discharges. For a category where Guidelines have been promulgated, such as steam electric generating stations, the issuance of an individual permit for the discharges would be more appropriate. (See 9VAC25-31-170 B.3.a.(3)).

4.2 Water Quality-Based Effluent Limitations

Water quality-based limitations for pH, temperature, chlorine, and total recoverable copper, zinc and silver are included in this general permit for all monitoring scenarios.

The pH limitation is based upon the Water Quality Standards (9VAC25-260-5 et seq.). There shall be no change from background conditions that would impair any uses assigned to the receiving streams.

Because of the concern of excess heat from cooling water discharges, and once through systems in particular, a respective temperature limit for non-tidal coastal and piedmont waters or mountainous waters, based on the Virginia Water Quality Standards (9VAC25-260-50) is placed in the permit. Restrictions on rise above natural temperature and maximum hourly temperature change are also imposed. In order to ensure that the stringent temperature standards for put and take trout waters and natural trout waters will be maintained, cooling water discharges to these receiving streams will not be covered by this general permit, rather be covered by an individual permit.

The general permit contains a TRC limit for freshwater and a CPO limit for saltwater based on the chronic criteria in the Water Quality Standards (9VAC25-260-140) for the protection of aquatic life regardless of the dilution available to the discharge. Chlorine limitations and monitoring are required for facilities where the following conditions prevail: 1) There is a direct discharge to surface waters; and 2) Either a treatment additive that contains chlorine or chlorine compounds is used, or the source of cooling water is chlorinated. For cooling water discharges to the MS4s, it is anticipated that dissipation in the cooling process and chlorine demand in the MS4s will reduce the residual chlorine to "de minimis" level. For any cooling water discharges to waters containing endangered and threatened species as identified in the Water Quality Standards (9VAC25-260-110 C.), chlorine or any other halogen compounds are not allowed to be used in the cooling water system.

The copper, zinc and silver limitations are based on the numerical water quality criteria in the Water Quality Standards (9VAC25-260-140) for protection of aquatic life. Limits are given for both freshwater receiving streams and saltwater receiving streams. For freshwater receiving streams, a total hardness as CaCO₃ of 100mg/l was assumed. The freshwater copper and zinc limits are based on the chronic criteria, while the silver is based on the acute criteria. The saltwater copper and zinc limits are based on the chronic criteria, while the silver is based on the acute criteria.

4.4 Toxics Considerations

Due to the concern that the use of corrosion inhibitors and/or biocides may be allowed through this general permit, and that metals could be discharged and thus the quality of the receiving stream could be impacted, a maximum flow of 50,000 gallons per day (0.05 MGD) is imposed in this general permit. It is the opinion of the Department that a larger discharge would need to be monitored on a more frequent basis and need additional controls, and it would be more appropriate to be covered by an individual permit. This approach is also consistent with the agency's Toxics Management Program.

Further assessment of the need for toxicity monitoring requirements for the restricted flow discharges (< 0.05 MGD) was performed by conducting an in-house review of toxicity test data for non-contact cooling water discharges (with or without additives). It showed that 94% of acute toxicity tests had an LC₅₀ greater than or equal to 100% effluent. It was concluded that these types of discharges, in general, are not acutely toxic. The report also showed that 75% of chronic toxicity tests had a no observed effect concentration (NOEC) greater than or equal to 100% effluent, which is the worst case of the instream waste concentration (IWC). These results indicate that both acute and chronic tests passed the decision criteria (75% of the tests) established by the Toxic Management Program. Therefore, additional toxicity monitoring is not imposed in this general permit.

5.0 Special Conditions and Their Basis

1. Restriction of floating solids and visible foam discharges. This is a standard requirement for all permits per the VPDES Permit Manual (2010) and conforms to the general water quality criteria at 9VAC25-260-20.
2. Prohibition of any discharges other than cooling water as defined. The effluent limitations do not address pollutants typical of treated sewage, process wastewater, or storm water discharges. Therefore no discharges other than cooling water as defined are permitted under the general permit.
3. Prohibition of unapproved chemical usage and prior approval requirement for change of treatment technology. In order to assure protection of water quality and beneficial uses of the waters receiving the discharge, the use of any chemical additives not identified in the registration statement, except chlorine,

without prior approval is prohibited under this general permit. The general permit contains a water quality-based chlorine limitation.

The chemical and/or non-chemical treatment that are employed in the cooling water system will be identified on the registration statement, a SDS shall be submitted for each proposed additive, and evaluated before the facility is covered under the general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical and/or non-chemical treatment technology employed in the cooling water system, during the life of the permit term.

4. Notification of municipal separate storm sewer system. Where cooling water discharges to surface waters through a municipal separate storm sewer system, the permittee is required to notify the owner of the municipal separate storm sewer system in writing of the existence of the discharge, and include the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number. The permittee is required to submit any DMRs required by the permit to both the Department and to the owner of the MS4. This is required in order to facilitate the municipality's efforts to control dry weather flows from the storm sewer. **New for this reissuance**, the facility must notify the owner of an MS4 of a proposed discharge to the MS4 at the time of registration under the general permit and include that notification with the registration statement.

5. Operation and maintenance manual requirement. The requirement that within 90 days of coverage under the general permit prepare an operations and maintenance (O&M) manual for the equipment or systems used to meet effluent limitations.

6. Notification levels. The permittee is required to report the discharge of any toxic pollutant from any activity that has occurred or will occur when that discharge, either on routine or non-routine basis, will exceed the highest of the listed notification levels. This condition is required by the VPDES Permit Regulation (9 VAC 25-31-200 A).

7. Geothermal Systems Using Groundwater and No Chemical Additives. Geothermal systems using groundwater and no chemical additives may be eligible for reduced monitoring requirements. If a geothermal system was covered by the expiring general permit, and the monitoring results from the previous permit term demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to reduce the monitoring to once in the first monitoring quarter of the first year of the new permit term.

Owners of new geothermal systems, and previously unpermitted geothermal systems that receive coverage under this permit shall submit monitoring results to the Department for the first four monitoring quarters after coverage begins. If the monitoring results demonstrate full compliance with the effluent limitations, the permittee may request authorization from the Department to suspend monitoring for the remainder of the permit term.

Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, upon issuance of the letter or notice, or initiation of the enforcement action the monitoring frequency shall revert to 1/3 months and remain in effect until the permit's expiration date.

8. The general permit requires that any monitoring results be reported using the same number of significant digits as listed in the permit.

9. Discharges to waters with an approved TMDL. Owners of facilities that are a source of the specified pollutant of concern to waters where an approved "total maximum daily load" (TMDL) has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL. The condition was developed since general permit discharges are considered insignificant to the overall TMDL waste load allocation. This special condition allows staff more flexibility to allow permit coverage for discharges without requiring immediate modification of the TMDL. DEQ will track all the general permit discharges and once they become significant for purposes of the TMDL, the TMDL will be modified to include the load.

10. Notice of Termination. This special condition spells out the procedure a permittee must use to terminate coverage under the general permit.

11. Discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

12. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation. This special condition repeats the requirement in 9VAC25-12-60 C (Authorization to Discharge).

6.0 General Permit Coverage

The general permit has a fixed term of 5 years. Every authorization under this general permit will expire at the same time and all authorizations will be renewed on the same date, provided a complete registration statement has been filed prior to the general permit's expiration date.

All persons desiring to be covered by this general permit must register with the Board by submitting a registration statement and applicable fee to the Department. The registration statement shall be submitted and a notification of coverage issued prior to any discharges or other activities for which this permit is required.

Cooling water sources that are discharging to surface waters on the effective date of this general permit and that have not been issued an individual VPDES permit, are required to submit the registration statement. Existing operations with individual VPDES permits that wish to seek coverage under the proposed general permit would have to file a registration statement at least 240 days prior to the expiration date of the individual VPDES permit. For all new cooling water dischargers that propose to discharge to surface waters and that will begin activities after the effective date of this permit, the registration statement shall be filed at least 60 days prior to the commencement of construction or operation of the cooling equipment.

This general permit does not cover activities or discharges covered by an individual VPDES permit until the individual permit has expired or has been revoked. Any person conducting an activity covered by an individual permit, which could be covered by this general permit, may request that the individual permit be revoked and register for coverage under this general permit. Antibacksliding will be considered prior to granting the coverage under this general permit. Any owner or operator not wishing to be covered or limited by this general permit may make application for an individual VPDES permit, in accordance with VPDES procedures, stating the reasons supporting the request.

This general permit does not apply to any new or increased discharge that will result in significant effects to the receiving waters. The determination is made in accordance with the State Water Control Board's Antidegradation Policy contained in 9VAC25-260-30 of the Virginia Water Quality Standards.

All facilities that the Board determines are eligible for coverage under this general permit will be authorized to discharge under the terms and conditions of the permit after a complete registration statement is submitted, the applicable permit fee is paid and the Department sends a copy of the general permit to the applicant. If this general permit is inappropriate (for example, effluent limitations are needed for any parameters other than flow, pH, temperature, total residual chlorine, copper, zinc or silver) the applicant will be so notified and the requirement that an individual permit or alternate general permit is needed will remain in effect.

7.0 Clean Water Act § 316(b) determinations

Section 316(b) of the Clean Water Act (CWA) requires that "the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact." Under state and federal regulations cooling water intake requirements for facilities covered under this general permit must meet the requirements of CWA § 316(b) on a case-by-case, best professional judgement (BPJ) basis. For example, state regulations at 9VAC25-31-165 C specify a BPJ approach for existing facilities. Similarly, federal regulations at 40 CFR 125.80(c) and 125.90(b) specify that facilities that do not meet the applicability thresholds in the federal new facility and existing facility

rules must meet CWIS requirements on a BPJ basis.¹ For example, 40CFR §125.90(b) requires that cooling water intake structures not subject to requirements under §§125.94 through 125.99 (subpart J, existing facilities) or subparts I or N (new facilities) of Part 125 must meet requirements under section 316(b) of the CWA established by the Director on a case-by-case, best professional judgment (BPJ) basis. This applies to existing facilities that either have a design intake flow (DIF) of equal to or less than 2.0 MGD or use less than 25 percent of their intake water exclusively for cooling. All facilities eligible for this general permit meet one of these thresholds.

Example:

If a facility discharges the maximum 50,000 gpd of cooling water allowed under this general permit and the cooling water comprises exactly 25 percent of the intake flow, then the facility's intake flow would be 200,000 gpd, which is far less than 2.0 MGD, and the BPJ provisions apply. If the percentage used for cooling increases, the intake flow decreases.

If less than 25 percent of the intake flow is used for cooling, then BPJ provisions apply.

As such, the following general cooling water intake structure information is now required on the registration statement for the purposes of informing such case-by-case Best Technology Available (BTA) determinations:

For facilities with surface water withdrawals or facilities that receive non-potable surface water from a third party supplier, the following:

1. Source water physical data (water body description, hydrology, chemistry, area of influence of intake structure).
2. Cooling water intake structure data (screen size, through screen velocity, configuration of intake, flows, water balance diagram, and typical operations).
3. Source water baseline biological characterization data (any available studies).
4. Cooling water system data (configuration of cooling water system, water reuse).
5. Operational status (description of current and future production schedules).

For hydropower facilities, a water use efficiency calculation is required in addition to the above information. Per EPA's *Framework for Considering Existing Hydroelectric Facility Technologies in Establishing Case-by-Case, BPJ 316(b) NPDES Permit Conditions*, a water use efficiency ratio greater than or equal to 460 megawatt hours per billion gallons per day (MWh/BGD) indicates that a hydroelectric plant has a cooling water withdrawal efficiency comparable to or better than closed-cycle cooling at steam electric power plants. The framework document concludes that in such cases, consistent with the Existing Facilities Rule BPJ provisions in 125.90(b), the facility would be deemed to meet BTA requirements to minimize entrainment and impingement mortality.

DEQ will also determine and consider the presence or absence of aquatic threatened and endangered species or critical habitat within a 0.5 mile radius of the intake. Based on these data, DEQ will use the following methodology to make case-by-case determinations as to whether the cooling water intake structures and practices in place at a facility constitute BTA:

For existing permittees, DEQ will consider the current technologies in place to be interim BTA for the 2023 permit term², but will use the data collected with the registration statement in order to make a final BTA determination prior to registering these facilities under the 2028 general permit.

¹ It is reasonable and appropriate to look to these federal regulations to support this general permit since they specify the existing federal standards that the state program needs to meet (i.e., be as stringent), and they reflect U.S. EPA's in-depth evaluation of the CWA best technology available requirements.

² DEQ's interim approach for existing permittees is based on preliminary water use efficiency calculations performed by the agency and the limited cooling water discharge level specified by this general permit.

For new registrants, one of the following BTA standards are required in order to be eligible for the general permit:

1. Intake structures with a slot size less than or equal to 1.0 mm and an approach velocity of less than or equal to 0.25 ft/sec; or,
2. No aquatic threatened or endangered species or critical habitat identified within 0.5 mile radius of the intake; or
3. For hydropower facilities, a water use efficiency ratio greater than or equal to 460 MWh/BGD.

DEQ believes that these requirements are reasonable for minimizing impingement mortality and entrainment at these facilities. The velocity and screening requirements and the consideration of protected species, combined with the low cooling water flow of this category of dischargers, is sufficient to reduce impingement mortality and entrainment without imposing an unjustified burden on covered facilities or unduly restricting the use of this general permit.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: Members of the State Water Control Board

FROM: Jutta Schneider, Director, Water Planning Division *Jutta Schneider*

DATE: 5/19/2022

SUBJECT: Proposed amendments to the Local and Regional Water Supply Planning Regulation (9VAC25-780)

At the June 22, 2022 meeting of the State Water Control Board (Board), the Board will consider the approval of proposed amendments to the Local and Regional Water Supply Planning Regulation (9VAC25-780). The proposed amendments were developed in response to the directive created by Chapter 1105 (HB542) of the 2020 Acts of Assembly that requires the Board to adopt regulations designating regional planning areas based primarily on river basin, identify the particular regional planning area in which each locality shall participate, as well as which local stakeholder groups shall or may participate in coordinated water resource planning, and that each regional planning area shall identify water supply risks and strategies for addressing those risks. The proposed amendments also address changes in the statute resulting from HB1297 (2022), which requires the Board to provide a mechanism for localities to request a change in their regional planning area.

During the 2022 Session, SB 657 was passed. This bill limits the authority of the State Water Control Board to the issuance of regulations and transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality. The proposed amendments incorporate changes in response to Chapter 356 (SB 657) of the 2022 Acts of Assembly of the General Assembly.

This regulatory proposal will amend the existing local and regional water supply planning regulation to designate regional planning areas based primarily on river basin, identify the planning area in which locality shall participate, require that localities plan regionally and identify regional planning areas for each locality, develop requirements for the identification of water supply risks and strategies to address those risks, and revise the water supply plan development, submission, and review procedures to align with the new requirements including clarifying the roles and responsibilities for localities, stakeholders, and the Department of Environmental

Quality (Department). This memorandum provides a brief background on the Local and Regional Water Supply Planning Regulation and the regulatory process to date.

BACKGROUND

The Local and Regional Water Supply Planning Regulation (9VAC25-780) was promulgated in 2005 in accordance with section 62.1-44.38:1 A of the Code of Virginia, which required the State Water Control Board (Board) to establish a comprehensive water supply planning process for the development of local, regional and state water supply plans (Plan). This action was largely in response to the 2001-2002 drought during which many public water supplies within the Commonwealth experienced inadequate supply to meet demands. The regulation requires localities to develop plans that include local information on water sources, current and future demand, and assessments of whether current sources are sufficient to meet future demands. The Department then uses this information to develop statewide evaluations of current and future use, and conducts cumulative impact analyses of water resources based on locally derived information as well as water use information collected through other reporting programs.

Under the current regulation, localities can choose to develop a plan independently (local plan) or may choose to plan regionally with other localities (regional plan). In total, 48 water supply plans were submitted in 2008, of which 10 were local plans and 38 were regional plans with the majority of those consisting of one county and one or more cities or incorporated towns located within the boundaries of the county. Planning regions were not specifically determined based on river basin or with respect to shared sources of water supply. In a 2016 report published in response to a directive by the General Assembly to evaluate Virginia's water resources management and planning programs, the Joint Legislative Audit and Review Commission concluded that plans developed under the existing regulation were not sufficiently regional and that as a result, localities may miss opportunities for collaboration that would improve access to water across the Commonwealth.

As noted above, this regulatory action was initiated in response to HB542 (Chapter 1105 of the 2020 Acts of Assembly), which required the Board to adopt regulations that addressed the new statutory requirements discussed in the above section.

The Notice of Intended Regulatory Action was published on June 7, 2021 and a public comment period ran through July 22, 2022. DEQ received five comments during the comment period which each nominated one or more individuals for agency consideration on the Regulatory Advisory Panel (RAP). No requests for a public hearing were received during the comment period. A summary of the comments and agency response is included in the agency background document (Attachment C). The Director appointed a Regulatory Advisory Panel (RAP) and the membership list is included as attachment A. The RAP met a total of six times before concluding business on April 6, 2022. Meeting summaries can be found on the agency website [here](https://www.deq.virginia.gov/water/water-quantity/water-supply-planning/hb542-regulatory-action) (https://www.deq.virginia.gov/water/water-quantity/water-supply-planning/hb542-regulatory-action).

While the majority of the RAP expressed support or raised no specific concerns for the proposed amendments, three members did not support the proposed amendments and identified the following concerns:

- The member representing Chesterfield County and Virginia Municipal Drinking Water Association (VMDWA) noted concerns about how water supply risks were to be incorporated into plans including whether risks are incorporated into an alternative analysis, and requests for more clarity in the regulation on specifics like whether demand projections with or without water conservation are used to determine deficit.
- The member representing Fairfax Water noted concerns related to Department involvement in convening planning without alternatives for already established planning systems, concerns related to the listed water supply risks in Section 125, the inclusion of instream flow requirements in section 90, the need for additional clarification of the difference between locality and Department roles/requirements, and that concerns will not be adequately clarified through guidance due to the volume of planned guidance.
- The member representing the City of Richmond noted concerns related to the inclusion of Louisa County in the Middle James 1 Basin, as well as how regulated communities may be affected by the large amount of planned guidance, and requirements for localities to include information related to required instream flow to protect beneficial uses.

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

A detailed summary of changes as a result of the proposed amendments are included in Table 1 of the Agency Background Document (Attachment C). A brief summary of the changes is provided below. Where section titles are amended in the proposed amendments, the amended title is provided below.

SUMMARY OF PROPOSED AMENDMENTS TO LOCAL AND REGIONAL WATER SUPPLY PLANNING REGULATION (9VAC25-780)

Title of Chapter

Section 10 – Application Requirements – Adjustments to language based on statutory requirement for all localities to participate in cross-jurisdictional, coordinated water resource planning, and to develop and submit, with the other local governments within a regional planning area, a single jointly produced regional water plan to the department. Other minor language changes to address the new regional planning requirement.

Section 20 – Purpose of Chapter – Addition of language from statute to match additions in the statute to define purpose of the regulation.

Section 30 – Definitions – Revised or removed several definitions related to programs, plans, and planning areas to accommodate new requirements for regional planning and elimination of local plans. Revised definition of beneficial use to refer to the definitions included in 9VAC25-210 and 9VAC25-610 (surface water and groundwater withdrawal permitting regulations). Revised definition of “State Water Control Board” to address Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). Added definitions for “Stakeholder”, “State Water Resources and Supply Plan”, “Water Authority”, and “Water Supply Risk.”

Section 40 – Program Development - Section repealed. Requirements now included in Section 50.

Section 45 – Designation of Regional Planning Areas - Addition of new section which identifies the regional planning areas and the members off those planning areas for purposes of this regulation, as well as the process for a locality to request a change in the planning area as required by Chapter 331 of the 2022 Acts of Assembly.

Section 50 – Preparation of local information and regional water supply plan; submission of requirements for a regional water supply plan – Changes in this section were to address the regional scope of planning and generally clarified existing requirements while adding several items required by the new statutory changes. Clarified which requirements within a water supply plan are the responsibility of local governments, identified requirement for regional plan to be submitted no later than five years after effective date of regulation, and outlined the plan development process, and clarified responsibilities for regional planning units and the Department. Added requirement for Department to convene kick-off meetings and maintain a list of current representatives except in cases where a regional planning unit notifies the Department that a planning district commission will manage these tasks in lieu of the Department. Added language to address participation of stakeholder groups in plan development as required by new statutory language. Revised language clarifying what kinds of information and sources of information are considered “readily available”, and thus should be utilized during plan development. Clarified public process and local ordinance adoption in order for a draft plan to be considered final, including adding language describing the process for when a local government fails to adopt the resolution and the regional planning unit may submit the plan without the local government’s authorization. Added language that plans should reflect consensus of local governments and that disagreements should be documented in the plan. Added requirements for appending support materials to the plan such as local ordinances adopting the plan and drought response plans, among other items. Clarified the five year plan review process, under what conditions a plan should be updated via a supplement, and that public notice of supplements are not required. Revision of numbering throughout section to accommodate revisions. Revised usage of Board to Department per Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657).

Section 55 – Public participation in regional water supply plans – Added new section to clarify existing requirements related to public participation and to meet new statutory requirements for increased participation in plan development of stakeholders and public.

Section 60 – State role in regional water supply plan preparation – Added new requirements for the Department as included in the new statutory language and added requirement related to regional plan kick-off meetings. Minor revisions to address change to regional plan requirement. Revised usage of Board to Department per Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657).

Section 70 – Existing water source information – Revised section to clarify requirements to account for regional planning including defining local government responsibility to collect information within their jurisdiction and Department responsibility to provide information to be used by local governments, several minor clarifications to existing requirements for contractual agreements to transfer water between water systems, and removed a requirement to summarize

findings of source water assessment or wellhead protection programs. Revised usage of Board to Department per Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657).

Section 80 – Existing water use information – Revised section to clarify requirements to account for regional planning including defining responsibilities for local governments and the Department with respect to existing water use information.

Section 90 - Existing water resource information – Revised section to clarify local government responsibility for information requirements, clarified that information need only be derived from existing readily available sources or information provided by the department, and revised language related to assessments of threats to water quantity and quality to instead address water availability based on instream flow necessary to support aquatic life (based on information provided by the Department).

Section 100 - Projected water demand information; Statement of need and alternatives – Revised section to clarify local government responsibilities with respect to projected demand information and standardize water demand estimate period of 30 years. Requirements related to statement of needs and alternatives previously included in section 130 (section repealed) were consolidated into this section with revisions to clarify local government responsibility and regional planning unit responsibilities in evaluating need and identifying alternatives.

Section 110 - Water demand management information – Revised section to clarify local government responsibility in providing information related to water demand management and other minor revisions to address renumbering and language changes necessary to accommodate regional planning requirements.

Section 120 - Drought response and contingency plans – Revised section to clarify local government responsibility for developing a drought response and contingency plan, addition of language to address conflicts between drought plans and withdrawal permits, and addition of language allowing development of a regional drought plan if the regional planning unit chooses to do so.

Section 125 – Identification of water supply risks and proposed regional strategies – Addition of new section to address new statutory requirement for regional water supply plans to identify water supply risks and propose regional strategies to address them. Section requires regional water supply plans to identify water supply risks and to assess the likelihood and severity of the risk. The section requires consideration of specific risks identified in the proposed regulation as well as any other risks identified by local governments within the regional planning area. For each risk identified, the language requires identifying and evaluating a reasonable range of potential regional strategies or projects to address the risks.

Section 130 – Statement of need and alternatives – Section repealed and requirements included in Section 100.

Section 140 - Review of regional water supply plans – Section revised to reflect the requirement for regional water supply plans and therefore elimination of references to local water supply plans and local programs. Addition of new plan requirements such as the identification of water supply risks and regional strategies to the list of elements that will be reviewed by the

Board. Section was also revised to include a more detailed list of the contents of the State Water Resources and Supply Plan based on statutory requirements. The State Water Resources and Supply Plan is produced by the Department and made available for local governments for use in plan development. Revised usage of Board to Department per Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657).

Section 150 - Public notice and public comment period – Minor revisions in language to account for changes from local plans to regional plans and revisions of usage of Board to Department per Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657).

Section 160 – Public meetings - Minor revisions in language to account for changes from local plans to regional plans and revisions of usage of Board to Department per Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657).

Section 180 – Enforcement – Addition of language clarifying that a local government shall not be liable if a local government or other entity within their regional planning unit fails to comply with any requirement within this chapter.

STAFF RECOMMENDATION

Staff recommend that the State Water Control Board approve the draft regulatory changes proposed to 9VAC25-780 and authorize staff to proceed to notice of public comment.

ATTACHMENTS

- A. Regulatory Advisory Panel Membership Roster
- B. Draft Amendments to the Local and Regional Water Supply Planning Regulation (9VAC25-780)
- C. Agency Background Document

PRESENTER CONTACT INFORMATION

Name: Scott Kudlas, Office of Water Supply Manager

Phone: (804) 698-4456

Email: Scott.kudlas@deq.virginia.gov

REGULATORY ADVISORY PANEL MEMBERSHIP ROSTER

Members:

Whitney Katchmark
Hampton Roads Planning District
Commission
The Regional Building
723 Woodlake Drive
Chesapeake, VA 23320

Pam Kenel
Loudoun Water
44865 Loudoun Water Way
Ashburn, VA 20147

Ross Phillips
City of Richmond
900 E. Broad Street
Richmond, VA 23219

Eric Lawrence
Frederick County
PO Box 1877
Winchester, VA 22604

Chad Neese
Southside PDC
200 South Mecklenburg Avenue
South Hill, Virginia 23970

Michael Ward
Henry County
P.O. Box 7
Collinsville, Virginia 24078

Robert Cornett
Washington County Service Authority
25122 Regal Drive
Abingdon, VA 24211

Kevin Byrd
New River Valley Regional Commission
6580 Valley Center Dr.
Ste 124
Radford, VA 24141

Pamela Baughman
VA Rural Water Association/Louisa County
Water Authority
23 Loudin Lane
Louisa, VA 23093

Jon Brindle
Stafford County
1300 Courthouse Road
Stafford, VA 22554

James Maupin
Virginia Water Well Association
P.O. Box 1170
Powhatan, VA 23139

Erin Reilly
James River Association
211 Rocketts Way
Suite 200
Richmond, VA 23231

Jay Ford
Chesapeake Bay Foundation
Capitol Place
1108 E. Main Street
Suite 1600
Richmond, VA 23219

Martha Moore
VA Farm Bureau
12580 West Creek Parkway
Richmond, VA 23238

Kyle Shreve
Virginia Agribusiness Council
9323 Midlothian Turnpike
Suite T
Richmond, VA 23235

Brett Vassey
Virginia Manufacturer's Association

2108 West Laburnum Avenue
Suite 230
Richmond, Virginia 23227

Elizabeth Povar
RiverLink
125 Bowden Street
P.O. Box 286
Saluda, VA 23149

Eldon James
Virginia Chapter American Planning
Association/Rappahannock River Basin
Commission
24 E. Cary St
Suite 100
Richmond, VA 23219

Leigh Mitchell
Virginia Regional Tribal Operations
Committee
8200 Lott Cary Rd.
Providence Forge, VA 23140

Dwayne Roadcap
Virginia Department of Health
109 Governor Street
6th Floor
Richmond, VA 23219

Amy Martin
Virginia Department of Wildlife Resources
P.O. Box 90778
Henrico, VA 23228

Randy Owen
Virginia Marine Resources Commission
380 Fenwick Road
Building 96
Ft. Monroe, VA 23651

Anne Doyle
Accomack-Northampton PDC
PO Box 417
23372 Front Street
Accomac, Virginia 23301

Greg Prelewicz
Fairfax Water
8570 Executive Park Ave
Fairfax, VA 22031

Scott Morris
Virginia Municipal Drinking Water
Association / Chesterfield County
Department of Utilities
9840 Government Center Pkwy
Chesterfield, VA 23832

Project 6543 - PROPOSED**State Water Control Board****Amendments pursuant to Chapter 1105 of the 2020 Acts of Assembly**

Chapter 780

Local and Regional Water Supply Planning

9VAC25-780-10. Application.

A. All ~~counties, cities and towns (hereinafter "local governments")~~ local governments in the Commonwealth of Virginia shall ~~submit a local water supply plan or shall participate in a regional planning unit in the submittal of a regional water supply plan to the board in accordance with this chapter~~ participate in cross-jurisdictional, coordinated water resource planning, and shall develop and submit, with the other local governments within a regional planning area, a single jointly produced regional water plan to the department.

B. ~~The provisions of this regulation shall not affect any water supply project for which a permit application was submitted prior to January 1, 2003, to any state or federal agency. The provisions of this regulation shall not affect any water supply project for which~~ To the extent any provision of this chapter is applicable to or otherwise affects an application for a permit, license, grant, loan, or other request for funding has been of any kind made to a state or federal agency prior to January 1, 2003, such application shall be subject to the version of this chapter in effect on the date the application is submitted. All projects shall remain subject to applicable federal and state regulatory requirements.

~~C.~~ Nothing in this chapter shall be construed as altering or authorizing any alteration of any existing surface, ground water or common law water rights; contractual rights or obligations relating to water supplies; or rights to freely enter into contracts or agreements relating to water supplies, of any property owner within the Commonwealth ~~local government, water authority, or person, except as required by federal or state law.~~

~~D.~~ The review required by 9VAC25-780-140 shall not be a prerequisite for applying for a permit from the Commonwealth of Virginia for a water supply project.

9VAC25-780-20. Purpose of chapter.

The purpose of this chapter is to establish a comprehensive water supply planning process for the collection of certain data by localities and the development of local, regional, and state water supply plans. This process shall be designed to (i) ensure that adequate and safe drinking water is available to all citizens of the Commonwealth; (ii) encourage, promote, and protect all other beneficial uses of the Commonwealth's water resources; ~~and~~ (iii) encourage, promote, and develop incentives for alternative water sources, including but not limited to desalinization; and (iv) encourage the development of cross-jurisdictional water supply projects.

This chapter establishes the required planning process and criteria that local governments with the participation of other stakeholders, shall use in the development of ~~the local data and regional water supply plans.~~

9VAC25-780-30. Definitions.

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia; the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia;

the Virginia Water Protection Permit Program Regulation, 9VAC25-210; and the Surface Water Management Area Regulation, 9VAC25-220, including any general permits issued thereunder.

~~"Beneficial use" means both in-stream and offstream uses. In-stream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, and commercial and industrial uses~~ has the meaning defined in 9VAC25-210-10 with respect to surface water and the meaning defined in 9VAC25-610-10 with respect to groundwater.

"Board" means the State Water Control Board. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, "Board" means the "Department of Environmental Quality".

"Community water system" means a waterworks that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, and is regulated by the Virginia Department of Health Waterworks Regulations (12VAC5-590).

~~"Conservation" means practices, techniques, and technologies that improve the efficiency of water use.~~

"Department" means the Department of Environmental Quality.

"Local government" means a city, incorporated town or county.

~~"Local program" means the combined water plan, resource conditions, and drought response and contingency plan developed in compliance with this regulation. The term "local program" will be used in this regulation to mean either local or regional programs. The term "program" implies the institution of a continuous planning process for maintenance of these documents.~~

~~"Planning area" means the geographical area as defined by local government boundaries that is included in a local or regional water supply plan.~~

"Planning period" means the 30-year ~~to 50-year~~ time frame used by the locality local governments and regional planning units to project future water demand in accordance with 9VAC25-780-100 B.

"Regional planning area" means the geographical area as defined by 9VAC25-780-45 that is included in a regional water supply plan.

~~"Regional planning unit" means a collection of local governments who have voluntarily elected to, water authorities, and participating stakeholders that shall develop and submit a regional water supply plan. A regional planning unit may be composed of all local governments located within the bounds of a planning district, any subset of local governments within the bounds of a planning district, or any group of local governments within multiple planning districts. Planning district commissions are encouraged to participate in the regional planning unit.~~

"Regional water supply plan" means a water plan the document developed and submitted by two or more cities or counties or both. A town and an adjacent county may develop a regional water plan. Two or more towns may develop and submit a regional water plan where the plan results in the proposed development of future water supply projects that address the water supply demands of the affected towns. Such plans developed by two or more towns may be included in regional water plans developed and submitted by counties or cities. Regional water plans shall be developed and submitted in conjunction with all public service authorities operating community water systems within the regional planning unit, if applicable, by a regional planning unit for a regional planning area in compliance with 9VAC25-780-50 D.

"Self-supplied user" means any person making a withdrawal of surface water or ground water from an original source (e.g., a river, stream, lake, aquifer, or reservoir fed by any such water body) for their own use. ~~Self-supplied users do not receive water from a community water system.~~

"Service area" means the geographical area served by a community water system.

"Stakeholder" includes industrial and agricultural water users, public water authorities, private water suppliers, developers and economic development organizations, and conservation and environmental organizations.

"State Water Resources and Supply Plan" is a plan developed to address the criteria of § 62.1-44.38 B using information developed by local governments and used to develop regional water supply plans.

"Technical evaluation committee" means a committee of state agencies, including but not limited to the Department of Health, the Department of Conservation and Recreation, the Marine Resources Commission, the Department of Historic Resources, and the Department of Game and Inland Fisheries Wildlife Resources, convened by the Department of Environmental Quality ~~in accordance with subdivision 8 of 9VAC25-780-60~~ to provide comments on the impacts to or conflicts among ~~in-stream and offstream~~ beneficial uses resulting from proposed alternatives for meeting projected water demands.

"Unaccounted for losses~~water~~" means the difference between a community water system's billing records for volumes of water distributed and production records for volumes of water treated.

"Water authority" is a water supply entity created under § 15.2-5100 et. seq. of the Code of Virginia.

"Water conservation" means practices, techniques, and technologies that improve the efficiency of water use.

"Water demand management" means plans for improving water use efficiency through water conservation, reuse, and reducing unaccounted for water losses contained in a local program.

~~"Water plan" means a document developed in compliance with this regulation. The term "water plan" will be used in this regulation to mean either local or regional water plans.~~

"Water sources" means wells, stream intakes, and springs, reservoirs or aquifers that serve as sources of water supplies.

"Water supply risk" refers to a future circumstance or event that may reasonably impair the ability of one or more local governments, water authorities, or community water systems in the water planning area to meet current or projected water demand within the planning period. Water supply risks do not include (1) minor, infrequent, and temporary interruptions to the available water supply or water quality that may be remedied through the normal operation and maintenance of water supply systems, (2) projected deficits in water supplies identified in accordance with the requirements of 9VAC25-780-100 I, or (3) potential events or circumstances that are not reasonably foreseeable to occur within the planning period.

9VAC25-780-40. Program development. (Repealed.)

~~Local governments shall develop programs for local or regional water plans that are necessary to comply with this chapter. Local governments shall consult and coordinate with all community water systems in the planning area during the preparation of local or regional programs. Community water systems within the planning area shall cooperate and participate with the locality during preparation of the local program. Counties, cities, and towns are encouraged to develop regional programs. Local programs shall be designed to (i) ensure that adequate and safe drinking water is available, (ii) encourage and protect all beneficial uses, (iii) encourage and promote alternative water sources, and (iv) promote conservation.~~

9VAC25-780-45. Designation of Regional Planning Areas.

A. Regional planning areas are designated in 9VAC25-780-45 B. Incorporated towns not listed in 9VAC25-780-45 B shall participate in the same regional planning area as the county within which they are located.

B. The board designates the following regional planning areas:

1. The Big Sandy and Upper Tennessee Rivers 1 planning area encompasses the counties of Lee, Scott, and Wise; and the City of Norton.
2. The Big Sandy and Upper Tennessee Rivers 2 planning area encompasses the counties of Buchanan, Dickenson, Russell, Smyth, Tazewell, and Washington; and the City of Bristol.
3. The Chowan River 1 planning area encompasses the counties of Brunswick, Lunenburg, Nottoway, and Prince Edward.
4. The Chowan River 2 planning area encompasses the counties of Greensville, Surry, and Sussex; and the City of Emporia.
5. The Eastern Shore planning area encompasses the counties of Accomack and Northampton.
6. The Middle James River 1 planning area encompasses the counties of Albemarle, Buckingham, Fluvanna, Greene, and Louisa; and the City of Charlottesville.
7. The Middle James River 2 planning area encompasses the counties of Amherst, Appomattox, Campbell, and Nelson; and the City of Lynchburg.
8. The Middle James River 3 planning area encompasses the counties of Amelia, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, Powhatan, and Prince George; and the cities of Colonial Heights, Hopewell, Petersburg, and Richmond.
9. The New River 1 planning area encompasses the counties of Bland, Giles, Montgomery, and Pulaski; and the City of Radford.
10. The New River 2 planning area encompasses the counties of Carroll, Floyd, Grayson, and Wythe; and the City of Galax.
11. The Northern Coastal Plain 1 planning area encompasses the counties of Lancaster, Northumberland, Richmond, and Westmoreland.
12. The Northern Coastal Plain 2 planning area encompasses the counties of Essex, King and Queen, Mathews, and Middlesex.
13. The Northern Coastal Plain 3 planning area encompasses the counties of Caroline and King George.
14. The Northern Piedmont 1 planning area encompasses the counties of Culpeper, Fauquier, Madison, Orange, and Rappahannock.
15. The Northern Piedmont 2 planning area encompasses the counties of Spotsylvania and Stafford; and the City of Fredericksburg.
16. The Northern Virginia planning area encompasses the counties of Fairfax, Loudoun, and Prince William; and the cities of Alexandria, Arlington, Fairfax, Falls Church, Manassas, and Manassas Park.
17. The Roanoke River 1 planning area encompasses the counties of Bedford, Franklin, and Roanoke; and the cities of Bedford, Roanoke, and Salem.
18. The Roanoke River 2 planning area encompasses the counties of Henry, Patrick, and Pittsylvania; and the cities of Danville and Martinsville.
19. The Roanoke River 3 planning area encompasses the counties of Charlotte, Halifax, and Mecklenburg.

20. The Shenandoah River 1 planning area encompasses the counties of Augusta and Rockingham; and the cities of Harrisonburg, Staunton, and Waynesboro.

21. The Shenandoah River 2 planning area encompasses the counties of Clarke, Frederick, Page, Shenandoah, and Warren; and the City of Winchester.

22. The Southeast Virginia planning area encompasses the counties of Isle of Wight and Southampton; and the cities of Chesapeake, Franklin, Norfolk, Portsmouth, Suffolk, and Virginia Beach.

23. The Upper James River 1 planning area encompasses the counties of Alleghany, Bath, and Highland; and the City of Covington.

24. The Upper James River 2 planning area encompasses the counties of Botetourt, Craig, and Rockbridge; and the cities of Buena Vista and Lexington.

25. The York and James River 1 planning area encompasses the counties of Charles City, King William, and New Kent.

26. The York and James River 2 planning area encompasses the counties of Gloucester, James City, and York; and the cities of Hampton, Newport News, Poquoson, and Williamsburg.

C. A local government may request that the department change its designated regional planning area to an adjoining planning area. The request shall be in writing and shall demonstrate that the local government shares common water supply sources, river basin, or existing or planned cross-jurisdictional relationships with the planning area it proposes to join. The department will provide notice of the request to all designated representatives of local governments in the two affected regional planning areas. If no objections are received by the department within 30 days of notifying the designated representatives, the department shall approve the request. If one or more objections are received, the department shall approve or deny the request after considering the positions of the requesting and objecting parties in light of the purpose and objectives of this chapter. The department shall provide notice of any action to approve or deny a request to modify a regional planning area concurrently to the requesting local government and all other designated representatives in the affected regional planning areas. Department action approving a request shall be effective on the date the notice is provided.

9VAC25-780-50. Preparation of local information and regional water supply plan; submission of requirements for a program regional water supply plan.

A. Local governments must adopt a local program as defined in this section, including any revisions to comprehensive plans, water supply plans, water and sewer plans, and other local authorities necessary to implement this chapter. A local public hearing consistent with § 15.2-1427 of the Code of Virginia is required during the development of the local program. The public hearing may be combined with other public hearings that may be required. Each locality in a regional planning area shall assist its regional planning unit in developing and submitting a single jointly produced regional water supply plan to the department within five years from the effective date of the regulation. To meet this requirement, local governments must complete the following for use by the regional planning unit:

1. Prepare water source information from its jurisdiction that complies with 9VAC25-780-70.

2. Prepare existing water use information from its jurisdiction that complies with 9VAC25-780-80. This information must include a review of water reporting data provided by the department and supplemented to the extent practicable, with any locally known omissions of water users, and service area maps for public water utilities.

3. Prepare existing water resource information from its jurisdiction that complies with 9VAC25-780-90.

4. Prepare a 30-year demand projection of water demand and any alternatives for deficits in meeting this demand from existing sources of supply for its jurisdiction that complies with 9VAC25-780-100.

5. Prepare water demand management information from its jurisdiction that complies with 9VAC25-780-110.

6. Prepare a minimum three-stage drought response and contingency plan for its jurisdiction consistent with local sources of supply and water use patterns that complies with 9VAC25-780-120.

~~B. All local governments shall submit a local program to the department in accordance with the following schedule:~~

~~1. Local governments with populations in excess of 35,000 persons based on the most recent U.S. Census shall do so no later than November 2, 2008.~~

~~2. Local governments with populations in excess of 15,000 persons but no more than 35,000 persons based on the most recent U.S. Census shall do so no later than November 2, 2009.~~

~~3. Local governments with populations less than or equal to 15,000 persons based on the most recent U.S. Census shall do so no later than November 2, 2010.~~

~~4. Notwithstanding the above, local governments may elect to participate in the submittal of regional water supply plans. By November 2, 2008, local governments participating in a regional plan shall provide notice to the department of the intent to participate in a regional plan and shall include the names of the other participating localities. Such regional plans shall be submitted no later than November 2, 2011.~~

~~Nothing in this section shall be construed as limiting the submittal of local or regional water supply plans before the date when such plans are due. In developing a regional water supply plan, regional planning units shall use the following process:~~

1. Each local government and water authority shall designate a representative and one or more alternates to represent its interests in the regional planning unit by submitting the names and contact information of such individuals to the department within 60 days of the effective date of the regulation. Local governments and alternates may jointly represent the local government and any water authority created by the local government. The department will collect and distribute the contact information for the designated representatives and alternates, and a list of the available data for all registered community water systems and self-supplied users that utilize more than 300,000 gallons of water in any month, to the members of each respective planning unit. The department shall maintain a current list of designated representatives and alternates and shall make the list publicly available to facilitate coordinated water supply planning.

2. The department will schedule and convene a kickoff meeting for each regional planning unit to provide guidance on the regional water plan development process, requirements and timelines. The department will provide notice of the kickoff meeting, at a minimum, to (i) each designated representative for the regional planning unit, (ii) any other community water systems and self-supplied users that utilize more than 300,000 gallons of water in any month, including agricultural, industrial, and power generation users within the respective regional planning area and (iii) any planning district commission whose territory includes all or part of the regional planning area. A kickoff meeting will be convened within 180 days of the effective date of this regulation. On the department's initiative or at the request of any designated representative, the department will schedule a kickoff meeting in preparation for revising a regional water supply plan in accordance with 9VAC25-780-50 I and 9VAC25-780-50 J.

3. Subsections B1 and B2 of this section shall not apply to any regional planning unit in which a planning district commission notifies the department that it will coordinate local government participation in the regional water supply plan development process in accordance with its authority under Chapter 42 of Title 15.2 of the Code of Virginia. Such notice may be submitted by any planning district commission whose territory includes the entire regional planning area. If the regional planning area embraces the territory of more than one planning district commission, a joint notice may be submitted by or on behalf of all such planning district commissions.

4. Each local government shall make reasonable efforts to consult and coordinate with all community water systems and self-supplied users that utilize more than 300,000 gallons of water in any month, including agricultural, industrial, and power generation users within its jurisdiction during the preparation of regional water supply plans. Regional planning units shall develop a process for other stakeholder participation in the preparation of a regional water supply plan.

5. To the extent practicable, regional water supply plans shall be consistent with the goals of § 62.1-44-38:1 A to (i) ensure that adequate and safe drinking water is available, (ii) encourage and protect all beneficial uses, (iii) encourage and promote alternate water sources including desalinization, (iv) promote water conservation, and (v) encourage the development of cross-jurisdictional water supply projects.

C. Local programs shall contain the elements listed below. governments shall be responsible for collecting and compiling the information from within their locality necessary to comply with these requirements. This Any information may required to be collected, compiled, or provided by a local government shall be derived from existing, readily available information and additional detailed. Additional studies shall not be required. Information is readily available to a local government if it is (i) in the possession of the local government; (ii) provided by the department, (iii) available from a website or electronic database known to and accessible by the local government in an appropriate format; or (iv) provided by a third party in response to a written request from the local government. The regional water supply plan shall document any known information gaps.

D. Regional water supply plans shall contain the elements listed below:

1. A description of existing water sources in accordance with the requirements of 9VAC25-780-70;
2. A description of existing water use in accordance with the requirements of 9VAC25-780-80;
3. A description of existing water resource conditions in accordance with the requirements of 9VAC25-780-90;
4. An assessment of projected water demand in accordance with the requirements of 9VAC25-780-100;
5. A description of water management actions in accordance with the requirements of 9VAC25-780-110 and 9VAC25-780-120;
6. An identification of water supply risks and regional strategies to address identified risks in accordance with the requirements of 9VAC25-780-125;
67. A statement of need for the regional planning unit in accordance with the requirements of 9VAC25-780-130 9VAC25-780-100;
78. An alternatives analysis that identifies potential alternatives to address projected deficits in water supplies in accordance with the requirements of 9VAC25-780-130 9VAC25-780-100;

~~89. A map or maps identifying important elements of the program discussed in the water supply plan that may include existing environmental resources, existing water sources, significant existing water uses, and proposed new sources;~~

~~9. A copy of the adopted program documents including any local plans or ordinances or amendments that incorporate the local regional program elements required by this chapter;~~

~~10. A resolution approving the plan from each local government that is party to the plan; and~~

~~11. A record of the local public hearing, a copy of all written comments and the submitter's response to all written comments received.~~

E. Except as provided in 9VAC25-780-50 F, a draft regional water supply plan shall not be deemed final and eligible for submission to the department until:

1. The public participation process in 9VAC25-780-55 has been completed; and

2. Each of the governing bodies of the local governments in the regional planning area has adopted a resolution authorizing the submission of the plan by the regional planning unit on the local government's behalf and provided a copy of the resolution to the regional planning unit.

F. If a local government fails or refuses to timely adopt the resolution referenced in 9VAC25-780-50 E, the regional planning unit may provide written notice to the department identifying such local government. The regional planning unit may submit the water supply plan without a local government's authorization 60 days after the notice is provided to the department.

G. Regional water supply plans shall reflect the consensus of the local governments and water authorities in the regional planning unit. The regional planning units shall attempt to resolve any disagreement to produce a consensus. Any disagreements among local governments or water authorities that cannot be resolved through the plan development process shall be documented in the plan.

H. The following documents and supporting materials shall be appended to and submitted with the regional water supply plan.

1. A copy of supporting documents including any revisions to comprehensive plans, water supply plans, water and sewer plans, and other local ordinances necessary to implement the regional water supply plan;

2. Copies of any drought response and contingency plans required by 9VAC25-780-120;

3. A resolution approving the regional water supply plan from each local government;

4. A copy of all written comments and a response to all written comments received as required by 9VAC25-780-55; and

5. A summary of the processes used to ensure cross-jurisdictional coordinated water resource planning between local governments and to ensure stakeholder consultation including a list of local governments and stakeholders that participated during the regional water supply plan development, including the process developed in accordance with 9VAC25-780-50 B 4. Copies of any public notices, written comments received and responses to the comments shall be included. Other correspondence and documentation such as invitations, meeting agendas, and outreach materials may be included and shall be provided upon request by the department.

DI. All local programs shall be reviewed no later than five years after a compliance determination by the board. No later than 180 days before the five-year anniversary of the most recent compliance determination by the department in accordance with 9VAC25-780-140 F. Revised plans shall be submitted when, each regional planning unit shall initiate a process to

review the regional water supply plan. If this review indicates that circumstances have changed or new information has been made available that will result in impacts one or more local governments within a regional planning unit resulting in substantial changes in current or proposed sources, demands, or water demands demand deficits or water supply risks that will were not be met by alternatives contained considered in the regional water plan, the regional planning unit shall prepare a supplement to the regional water supply plan addressing such circumstances or changed information. The supplement shall be submitted to the department no later than 180 days after the five-year anniversary of the most recent compliance determination. These Such circumstances may be caused by include but are not limited to changes in demands, the availability of the anticipated source-sources, cumulative impacts, in-stream beneficial uses, or other factors. In the case where the review by the local government or regional planning unit indicates that the circumstances have not changed sufficiently to warrant a revision of the water supply plan after five years, the locality regional planning unit shall notify the department that the information in the existing plan is still in-effect the most current available on or before the five-year anniversary of the most recent compliance determination. The actions of each regional planning unit under this subsection shall reflect the consensus of its local governments. A supplement to a regional water supply plan need not be publicly noticed or approved by resolution of the local governments.

EJ. Notwithstanding subsection D L of this section, all local programs regional water supply plans shall be reviewed, revised and resubmitted to the department every 10 years after the date of last approval in accordance with procedures and requirements set forth in this chapter. Except in regional planning areas for which notice has been provided by a planning district commission in accordance with subsection B3 of this section, no later than 180 days before the ten-year anniversary of the most recent compliance determination by the department, the department shall schedule and convene a kickoff meeting to initiate the planning process for the development of the regional water supply plan. In regional planning areas for which notice has been provided by a planning district commission in accordance with subsection B3 of this section, the identified planning district commission shall convene a kickoff meeting no later than 180 days before the ten-year anniversary of the most recent compliance determination and shall invite the department to participate.

9VAC25-780-55. Public participation in regional water supply plans.

A. The draft regional water supply plan developed by the regional planning unit shall be publicly noticed once in a newspaper of general circulation in each county, city and incorporated town in the regional planning area. A public notice in a newspaper of general circulation that covers multiple localities within a regional planning area shall satisfy this requirement for each local government included within that area of general circulation. The public notice shall include the following:

1. Brief description of the purpose of the draft regional water supply plan including a list of all localities included in the regional planning area;
2. Identification of means for the public to obtain copies of the draft regional water supply plan in electronic and paper formats;
3. Announcement of a comment period of at least 30 days following the date of publication for interested persons to submit written comments to their respective local government;
4. Brief description of how to submit comments; and
5. Either (i) notice of a public informational meeting or (ii) a statement informing persons of their right to request a public informational meeting.

B. If 15 or more individual requests for a public informational meeting are received from commenters in any county, city, or incorporated town, the county, city or incorporated town shall

publish a second public notice of a public informational meeting to be held no sooner than 15 days from the date of the notice. Local governments may hold joint informational meetings.

C. A public informational meeting shall include a presentation summarizing the draft regional water supply plan and a reasonable opportunity for interested members of the public to offer comments or questions on the draft plan.

D. The local government shall accept any additional written comments received up to 15 days after the public informational hearing.

E. Written comments received by any local government shall be circulated to the designated representative for the other local governments in the regional planning area. Responses to public comments shall be prepared in either of the following ways, as determined by the regional planning unit:

1. Each local government shall prepare a written summary of any comments it has received and a response to those comments; or
2. The regional planning unit shall prepare a joint document providing a summary and response to all comments received by each local government in the regional planning area.

F. The regional planning unit shall give due consideration to public comments and may revise the draft regional water supply plan. The revised regional water supply plan need not be publicly noticed.

9VAC25-780-60. State role in program regional water supply plan preparation.

To assist local governments in the development of ~~local programs~~ regional water supply plans, the ~~board~~ department will:

1. Provide ~~technical and financial assistance~~ planning, policy, and technical assistance to each regional planning area differentiated according to each area's water supply challenges, existing resources, and other factors;
2. Provide financial assistance from any planning funds and prioritize the allocation of planning funds and other available funds to local governments that sufficiently participate in regional planning;
3. Provide guidance on compliance options;
4. Facilitate acquisition of existing water resource conditions (the department shall prepare and post on its website a list of readily available sources for the items identified in 9VAC25-780-90 B);
5. Facilitate acquisition of existing use information that has been reported to the department;
6. Facilitate acquisition of water management information (the department shall prepare and post on its website a list of acceptable practices that are used with regard to the topics in 9VAC25-780-110);
7. Identify acceptable methods for the projection of future water demands as per 9VAC25-780-100;
8. Provide any information regarding known beneficial use conflicts relating to the development of alternatives as identified in the most recent State Water Resources and Supply Plan;
9. Convene kickoff meetings for the regional planning units;
10. Follow-up with localities that have been identified as not participating in the regional planning unit and the development of the regional water supply plan;

11. Ensure that local governments coordinate sufficiently in the development of regional plans;

12. Ensure that each regional plan clearly identifies the region's water supply risks and proposes strategies to address those risks;

13. At the request of the applicant, convene a technical evaluation committee meeting; and

14. Provide notice on the department website of local public hearings informational meetings on the local program regional water supply plan upon notification by the locality.

9VAC25-780-70. Existing water source information.

A. Each local government within the regional planning area shall provide existing water source information to assist in the development of the regional water supply plan. A regional water supply plan shall include current information on existing water sources within the regional planning area.

B. Each local government within the regional planning area shall provide existing water source information for community water systems using groundwater to assist in the development of the regional water supply plan. A regional water supply plan shall include, for community water systems using ground water; (i) the name and identification number of the well or wells, (ii) the well depth, (iii) the casing depth, (iv) the screen depth (top and bottom) or water zones, (v) the well diameter, (vi) the design capacity for the designed average daily withdrawal and maximum daily withdrawal, (vii) the system capacity permitted by Department of Health, and (viii) the annual and monthly permitted amounts contained in ground water withdrawal permits for all wells located within ground water management areas.

C. Each local government within the regional planning area shall provide existing water source information for community water systems using surface water reservoirs to assist in the development of the regional water supply plan. A regional water supply plan shall include, for community water systems using surface water reservoirs; (i) the name of the reservoirs, (ii) the sub-basins in which the reservoirs are located, (iii) the drainage area, (iv) the amount of on-stream storage available for water supply, (v) the design capacity for designed average daily and maximum daily withdrawals from the reservoirs, (vi) the safe yield of the reservoirs, (vii) the capacity of any associated water treatment plant, (viii) the Department of Health permitted capacity of the systems, and (ix) any limitations on withdrawal established by permits issued by the board department. For a community water system that operates a system of interconnected reservoirs, the reporting of the design capacity for withdrawals, designed average daily withdrawal, the designed maximum daily withdrawal and the safe yield information may be presented for the entire system or may be reported as subsets of the system, except that the plan must report the drainage area and amount of storage available for water supply from each reservoir independently. The plan shall designate which reservoirs and which intakes constitute a system for the purposes of this paragraph. The plan must report the drainage area and amount of storage available for water supply from each reservoir independently.

D. Each local government within the regional planning area shall provide existing water source information for community water systems using stream intakes to assist in the development of the regional water supply plan. A regional water supply plan shall include, for community water systems using stream intakes; (i) the name of the stream or river, (ii) the drainage area of the intake, (iii) the sub-basin in which the intake is located, (iv) the design capacity for designed average daily and designed maximum daily withdrawal from the stream, (v) the safe yield, (vi) the lowest daily flow of record, (vii) the design capacity of the pump station, (viii) the design capacity of the water treatment plant, (ix) the capacity of the system permitted by the Department of Health, and (x) any limitation on withdrawals established by permits issued by the board department.

E. To the extent that information is available, a To assist the development of the regional water supply plan, each local government shall review the data provided by the department for self-

supplied users of more than 300,000 gallons of surface water in any one month. Local governments shall review this information and provide information for any locally known withdrawals of more than 300,000 gallons in any one month not identified in the dataset provided. A regional water supply plan shall include a list of for all self-supplied users of more than 300,000 gallons per in any month of surface water for nonagricultural uses; (i) the name of the water body utilized, (ii) the design capacity for the designed average daily and maximum daily withdrawal, and (iii) any limitation on withdrawals established by permits issued by the board department, the Department of Health or any other agency.

F. To the extent that information is available, a To assist the development of the regional water supply plan, each local government shall review the data provided by the department for self-supplied users of more than 300,000 gallons of groundwater in any one month. Local governments shall review this information and provide information for any locally known withdrawals of more than 300,000 gallons in any one month not identified in the dataset provided. A regional water supply plan shall include, for all self-supplied users of more than 300,000 gallons per in any month of ground water for nonagricultural uses; (i) the name and identification number of the well or wells, (ii) the well depth, (iii) the casing depth, (iv) the screen depth (top and bottom) or water zones, (v) the well diameter, (vi) the design capacity for the designed average daily and maximum daily withdrawal and (vii) any limitation on withdrawal established by permits issued by the board department, the Department of Health, or any other agency.

G. To assist the development of the regional water supply plan, each local government shall review the data provided by the department for community water systems with existing contractual agreements to receive raw or finished water deliveries from another party. Local governments shall review this information and provide information for any locally known contractual agreements not identified in the dataset provided. A regional water supply plan shall include, for any community water systems with existing contractual agreements to receive raw or finished water deliveries from another party: (i) the source or sources of the water to be provided under the contract, (ii) the amount of ground or surface water to be purchased contractually available to be delivered to the community water system from water supply systems system outside the geographic boundaries of the planning area on a maximum daily and average annual basis, (iii) any contractual limitations on the purchase delivery of the water including but not limited to the term of any contract or agreement, (iv) the recipient(s) or areas served by the water purchased, and (v) the name(s) of the supplier(s).

H. A regional water supply plan, if practicable, shall include an estimate of the amount of water available to be purchased outside the planning area from any source with the capacity to withdraw more than 300,000 gallons per month in any month of surface and or ground water, reported on a maximum daily and average annual basis and any contractual limitations on the purchase of the water including but not limited to the term of any contract or agreement, the geographic region(s) that receive the water purchased, and the name(s) of the supplier(s), and which is not addressed by subsection G of this section.

I. To assist the development of the regional water supply plan, each local government shall review the data provided by the department related to agricultural users who utilize more than 300,000 gallons in any month. Local governments shall review this information and provide information for any locally known agricultural users of more than 300,000 gallons in any month not identified in the dataset provided. A regional water supply plan shall include, to the extent possible, (i) a list of agricultural users who utilize more than 300,000 gallons per month in any month, (ii) an estimate of total agricultural usage by source, (iii) whether the use is irrigation or nonirrigation, (iv) the maximum capacity of the intake or intakes or well or wells, and (v) whether the source is surface or ground water.

J. To assist the development of the regional water supply plan, each local government shall provide an estimate of the number of residences and businesses that are self-supplied by

individual wells withdrawing less than 300,000 gallons in any month and an estimate of the population served by individual wells. A regional water supply plan shall include an estimate of the number of residences and businesses that are self-supplied by individual wells withdrawing less than 300,000 gallons per month in any month and an estimate of the population served by individual wells.

~~K. When available, a water plan shall include a summary of findings and recommendations from applicable source water assessment plans or wellhead protection programs.~~

9VAC25-780-80. Existing water use information.

A. Each local government within the regional planning area shall provide information documenting existing water use information to assist in the development of the regional water supply plan. A regional water supply plan shall include, at a minimum, current information documenting existing water use as listed below for each local government within the regional planning area. Water use information shall be obtained from Department of Health waterworks permit compliance reports, the department ground water permit compliance reports or, department water use reports provided to each local government or other appropriate available sources. Information shall be reported for the most recent previous annual compilation of such data that is available on the date of submission of the water plan. Each local government shall be responsible for reviewing the water use information for their locality and obtaining this information from any known omissions in the dataset.

B. A regional water supply plan shall include the following information for each community water systemsystem within the regional planning area:

1. ~~The population within the planning area served by each community water system served.~~
2. The number of service connections within the planning area for each community water system.
3. ~~The average and maximum daily withdrawal for each community water system within the planning area of groundwater or surface water over the most recent five-year period.~~
4. The amount of water used within the planning area on an annual average basis, and on an average monthly basis for each community water system expressed in terms of million gallons per day over the most recent five-year period.
5. ~~The peak day water use by month for each community water system within the planning area.~~
6. An estimate of the water used on an average annual basis by self-supplied nonagricultural users of more than 300,000 gallons ~~per~~ in any month of surface and ground water within the service area of each the community water system.
7. An estimate of the amount of water used on an average annual basis by self-supplied agricultural users of more than 300,000 gallons ~~per~~ in any month of surface and ground water within the service area of each the community water supply system.
8. An estimate of the number of self-supplied users of less than 300,000 gallons ~~per~~ in any month of ground water and an estimate of the total amount of water used by them on an annual average basis within the service area of each the community water supply system.
9. ~~For each community water system included in the water plan, the plan shall include an~~ An estimate of the disaggregated amounts of water used in categories of use appropriate for the system. Typical categories may include:
 - a. Residential use;
 - b. Commercial, institutional and light industrial (CIL) use;

- c. Heavy industrial use;
- d. Military water use;
- e. Water used in water production processes;
- f. Unaccounted for losses;
- g. Sales to other community water systems and the names of such systems; or
- h. Subtotals of the above categories for all community water systems.

10. To the extent that information ~~or sources of information is available~~ are provided by the department pursuant to 9VAC25-780-60 and other sources, for each community water system ~~included in the water plan~~ using stream intakes, ~~the plan shall include~~ a qualitative description of existing in-stream beneficial uses within the planning area or outside the planning area that may be affected by the ~~point of~~ stream withdrawal.

C. A Using information provided by the department and any additional locally identified data, a regional water supply plan shall include an estimate of the water used on an average annual basis by self-supplied nonagricultural ~~user~~ users of more than 300,000 gallons ~~per~~ in any month of surface and ground water outside the service areas of community water systems.

D. A Using information provided by the department and any locally identified data, a regional water supply plan shall include an estimate of the amount of water used on an average annual basis by self-supplied agricultural users of more than 300,000 gallons ~~per~~ in any month of surface and ground water outside the service areas of community water systems.

E. A Using information provided by the department and any additionally identified data, a regional water supply plan shall include an estimate of the number of self-supplied users of less than 300,000 gallons ~~per~~ in any month of ground water and an estimate of the total amount of water used by them on an annual average basis outside the service areas of community water systems.

9VAC25-780-90. Existing water resource information.

A. ~~A program shall include a description of~~ Each local government within the regional planning area shall provide information documenting existing geologic, hydrologic, and meteorological conditions to assist in the development of the regional water supply plan. A regional water supply plan shall include a description of existing geologic, hydrologic, and meteorological conditions within the planning area, and in proximity to the point of withdrawal if it is outside the planning area.

B. A ~~program~~ regional water supply plan shall include a description of existing environmental conditions that pertain to, or may affect, in-stream flow, in-stream uses, and sources that provide the current supply. This description of conditions may be provided in a distinct section of the plan document or as a part of the existing water sources information required pursuant to 9VAC25-780-70. This information may be derived from existing, readily available sources of information, and information provided by the department. ~~and additional detailed~~ Additional studies shall not be required. The description of conditions shall include the following items, as they are applicable:

1. State or federal listed threatened or endangered species or habitats of concern;
2. Anadromous, trout and other significant fisheries;
3. River segments that have recreational significance including state scenic river status;
4. Sites of historic or archaeological significance;
5. Unusual geologic formations or special soil types;
6. Wetlands;
7. Riparian buffers and conservation easements;

8. Land use and land coverage including items such as percentage of impervious cover within a watershed and areas where new development may impact water quality of the source;
9. The presence of impaired streams and the type of impairment;
10. The location of point source discharges; and
11. ~~Potential threats to the existing water quantity and quality, other than those from above.~~ Water availability based on instream flow necessary to support aquatic life provided by the department as identified in the most recent version of the State Water Resources and Supply Plan.

9VAC25-780-100. Projected water demand information; Statement of need and alternatives.

A. Each local government within the regional planning area shall provide projections of future water demand to assist in the development of the regional water supply plan. A regional water supply plan shall include projections of future water demand as listed below for each local government within the regional planning area in accordance with this section. Population in aggregate and disaggregate formulations should be estimated according to information from the U.S. Census Bureau, Bureau of Economic Analysis, the Virginia Employment Commission, or other accepted source of population information, including but not limited to, local or regional sources. Demand projection methodologies should be consistent with those outlined in ~~the American Water Works Association or American Society of Civil Engineers manuals~~ by the department consistent with 9VAC25-780-60. Sources of information and methodologies used in projecting future water demand shall be documented.

B. A regional water supply plan shall estimate water demand within the planning area for a ~~minimum of 30 to a maximum of 50 years~~ into the future. ~~While not required, localities are encouraged to plan for the maximum planning period to ensure that the most appropriate and sustainable alternatives are identified.~~

C. A regional water supply plan shall include an estimated future water use projected at the beginning of each decade (2010, 2020, 2030, etc.) within the planning period.

D. A regional water supply plan shall include the following projections for community water systems:

1. An estimate of population within the planning area served by each community water system;
2. A map depicting the ~~proposed~~ service area of each existing or proposed community water system;
3. Estimated water demand for each existing or proposed community water system on both an annual average and peak monthly basis;
4. Estimated water demand for each existing or proposed community water system disaggregated into categories of use appropriate for the system. Typical categories may include:
 - a. Residential use;
 - b. Commercial institutional and light industrial (CIL) use;
 - c. Heavy industrial use;
 - d. Military water use;
 - e. Water used in water production processes;
 - f. Unaccounted for losses;
 - g. Sales to other community water systems and the names of such systems; or
 - h. Subtotals of the above categories for all community water systems; and

i. Projected water demands with and without water conservation pursuant to 9VAC25-780-110 B.

5. Total projected water demand for all existing or proposed community water systems disaggregated into the categories used in subdivision 4 of this subsection.

E. A regional water supply plan shall include a projection of water demand within the regional planning area on an annual average basis for each existing and any proposed self-supplied nonagricultural user of more than 300,000 gallons per in any month of surface and ground water ~~located outside the service areas of community water systems.~~

F. A regional water supply plan shall include a projection of the amount of water use on an annual average basis for each existing and any projected self-supplied agricultural user of more than 300,000 gallons per in any month of surface and ground water ~~located outside the service areas of community water systems.~~

G. A regional water supply plan shall include a projection of the number of self-supplied users of less than 300,000 gallons per in any month of ground water and a projection of the amount of water used on an annual average basis ~~outside the service areas of community water systems.~~

H. Each local government within the regional planning area shall assist in the development of the regional water supply plan by determining the adequacy of existing water sources to meet current and projected demand by preparing a clear statement of need that is derived from an evaluation of the information required by 9VAC25-780-70 through 9VAC25-780-110. The statement of need shall contain, at a minimum, a determination of whether the existing sources are adequate to meet current and projected demands. If the determination is that existing sources are inadequate to meet current or projected demands during the planning period, each local government shall identify a reasonable range of potential alternative sources of supply to address the shortfall in demand. The list of alternatives shall include:

1. Potential water savings from water demand management actions including an estimated volume for each action; and
2. Potential sources for new or alternative supplies including an estimated volume from each source.

I. If any local government in the regional planning area determines that one or more existing sources within its jurisdiction is inadequate to meet projected demands during the planning period, or the regional strategies proposed in 9VAC25-780-125 include the development of new or alternative water sources, the regional water supply plan shall include an alternatives analysis with the following elements:

1. A statement of need that addresses the location, magnitude, and timing of the projected shortfall in demand within the regional planning area;
2. Identification of a reasonable range of alternatives that potentially may satisfy the stated need, including all alternatives identified by a local government under 9VAC25-780-100 G, and, as appropriate, other (i) water savings from water demand management actions including an estimated volume for each action, (ii) sources for new water supplies, such as wells, reservoirs, impoundments and stream intakes, or aquifers, and an estimated volume from each source, and (iii) nontraditional means of increasing supplies, such as interconnection, desalination, recycling and reuse, and (iv) cross-jurisdictional regional approaches for shared development of new sources or expanding existing sources;
3. For each alternative to which it applies, a statement of any potential water availability issues identified by the department in the most recent review of the regional water supply plan or the State Water Resources and Supply Plan in accordance with 9VAC25-780-140 G, for each potential new source that any future water project will need to consider in its development; and

4. An assessment of whether the identified alternatives are (i) available, (ii) practicable in terms of cost, logistics, and existing technology, (iii) avoid and minimize the need for water to the extent practicable, and (iv) are sufficient to satisfy the need alone or in combination with other short- or long-term alternatives.

~~HJ.~~ A regional water supply plan shall include address, if available, any cumulative demand, use conflict, or in-stream flow information ~~developed identified by the department in the most recent review of the regional water supply plan or most recent version of the State Water Resources and Supply Plan pursuant to 9VAC25-780-140 G.~~

~~IK.~~ A regional water supply plan shall explain how the projected needs of domestic consumption, in-stream uses, and economic development have been accounted for in the demand projection for the planning period.

9VAC25-780-110. Water demand management information.

A. Each local government within the regional planning area shall provide information documenting existing water demand management plans or practices to assist in the development of the regional water supply plan.

~~AB.~~ As part of a long-term strategy, a regional water supply plan shall address water conservation as a part of overall water demand management in accordance with the following requirements:

1. A regional water supply plan shall ~~include information that describes practices~~ describe strategies for more efficient use of water that are used within the regional planning area. The type of measures to be described may include, but are not limited to, the adoption and enforcement of the Virginia Uniform Statewide Building Code sections that limit maximum flow of water closets, urinals and appliances; use of low-water use landscaping; and increases in irrigation efficiency.

2. A regional water supply plan shall ~~include information describing~~ describe the water conservation measures used within the regional planning area to conserve water through the reduction of use. The types of measures to be described may include, but are not limited to, technical, educational and financial programs.

3. A regional water supply plan shall ~~include information that describes~~ describe, within the regional planning area, the practices to address water loss in the maintenance of water systems to reduce unaccounted for water loss. The types of items to be described may include, but are not limited to: leak detection and repair and old distribution line replacement.

~~BC.~~ Current water conservation practices, techniques, and technologies shall be considered in projecting water demand pursuant to 9VAC25-780-100 D.

9VAC25-780-120. Drought response and contingency plans.

~~A. A program~~ Each local government with the regional planning area that includes contains within its geographic jurisdiction community water systems and self-supplied users who withdraw more than an average of 300,000 gallons per month in any month of surface water and ground water shall contain develop a drought response and contingency plans in accordance with the following requirements plan that contains the following:

1. Drought response and contingency plans shall ~~be structured to~~ address the unique characteristics of the water source that is being utilized and the nature of the beneficial use of water. Direct stream intakes shall consider the lowest flow of record and reservoirs shall consider available usable storage to the extent practicable.

2. Drought response and contingency plans shall contain, at a minimum, the following three graduated stages of responses to the onset of drought conditions:

a. Each drought stage shall have specific triggers designed to address the particular vulnerabilities of each water source.

ab. Drought watch stage responses are generally responses that are intended to increase awareness in the public and private sector to climatic conditions that are likely to precede the occurrence of a significant drought event. Public outreach activities shall be identified to inform the population served by a community water system of the potential for drought conditions to intensify and potential water conservation activities that may be utilized.

bc. Drought warning stage responses are generally responses that are required when the onset of a significant drought event is imminent. Voluntary water conservation activities shall be identified with the goal of reducing water use by 5-10%.

ed. Drought emergency stage responses are generally responses that are required during the height of a significant drought event. Mandatory water conservation activities shall be identified with the goal of reducing water use by 10-15%.

3. Drought response and contingency plans shall include references to local ordinances, if adopted, and procedures for the implementation and enforcement of drought response and contingency plans.

B. If there is a conflict between subsection A of this section and any condition of a permit issued by the department, a drought response and contingency plan shall conform to the permit and, to the extent practicable and consistent with the permit, subsection A of this section.

C. Each regional planning area, to the extent practicable, shall evaluate the feasibility of developing a regional drought response and contingency plan as part of the regional water supply plan. If a regional drought contingency and response plan is developed, it shall include all of the elements identified in the subsection A of this section.

D. If a regional drought response and contingency plan is not feasible, the regional water supply plan shall include a summary description of any cross-jurisdictional coordination efforts on drought response.

9VAC25-780-125. Identification of water supply risks and proposed regional strategies.

A. A regional water supply plan shall identify water supply risks. For each water supply risk identified the likelihood and severity of the impact on water supply in the regional water supply plan shall be evaluated.

B. In evaluating potential water supply risks, the regional planning unit shall consider, at a minimum, the following:

1. The findings of any wellhead protection or source water protection plans developed for sources of supply in the regional planning area;

2. The potential effects of climate change or need for climate resiliency;

3. Reduction in availability to meet water supply demands during short-term droughts and long-term droughts due to current demands, increasing demands, new withdrawals, or other factors;

4. Reduction in availability of groundwater from coastal plain or fractured rock aquifers due to current or increasing demands or new withdrawals;

5. The water needs of other beneficial uses, including aquatic habitat and waste assimilative capacity;

6. Reductions in available supply due to a lack of assessment or failure to address excessive rates of unaccounted water;

7. Affordability of costs for developing new or maintaining existing sources, infrastructure improvements, and impacts to rates for water customers; and

8. Other water supply risks as identified by the local governments.

C. The regional water supply plan shall identify and evaluate a reasonable range of potential regional strategies or projects to address each identified water supply risk. Each strategy or project shall include, at a minimum, the following information:

1. A description of the strategy or project and the local governments and stakeholders that would be involved if implemented; and
2. An analysis of how the strategy or project would mitigate the impact of the risk or risks. For strategies or projects intended to address risks associated with a reduction in available water supply, an estimate of how the strategy would impact available water supply shall also be included.

D. Regional strategies or projects may address more than one risk. Cross-jurisdictional strategies or projects shall be considered to the extent practicable. Strategies may include water conservation elements included in the water demand management information and drought response and contingency plans required by 9VAC25-780-110 and 9VAC25-780-120 respectively. Projects that include alternative water sources or the expansion of existing sources shall be included in the analysis of alternatives required by 9VAC25-780-100 I.

9VAC25-780-130. Statement of need and alternatives. (Repealed.)

~~A. A water plan shall determine the adequacy of existing water sources to meet current and projected demand by preparing a clear statement of need that is derived from an evaluation of the information required by 9VAC25-780-70 through 9VAC25-780-110. The statement of need shall contain, at a minimum, a determination of whether the existing source(s) is adequate to meet current and projected demands.~~

~~B. If the determination is that the existing source is inadequate to meet projected demands during the planning period, the program shall include an alternative analysis of potential sources that includes the following information:~~

- ~~1. A description of potential water savings from water demand management actions including an estimated volume for each action;~~
- ~~2. A description of potential sources for new supplies including an estimated volume from each source; and~~
- ~~3. A description of potential resource issues or impacts, identified in accordance with 9VAC25-780-140 G, known for each potential new source that any future water project will need to consider in its development.~~

~~C. Potential alternatives considered shall include water demand management alternatives as well as more traditional means of increasing supply, i.e., wells, reservoirs, impoundments and stream intakes. Where appropriate, the program shall consider nontraditional means of increasing supplies such as interconnection, desalination, recycling and reuse. The analysis of potential alternatives may include a combination of short-term and long-term alternatives. The result of this analysis shall be provided as part of the submission required by 9VAC25-780-50 C 7.~~

9VAC25-780-140. Review of local programs regional water supply plans.

~~A. The board department shall review all programs regional water supply plans to determine compliance with this regulation and consistency with the State Water Resources and Supply Plan. The board department will review adopted elements of a local program regional water supply plan according to review policies adopted by the board department. Copies of the adopted local program regional water supply plan documents and subsequent changes thereto shall be provided to the board department.~~

~~B. To assist in the review of the program regional water supply plans, the board department shall provide the Department of Health and other agencies listed in 9VAC25-780-150 B along with~~

any other agency the ~~board~~ department deems appropriate, 90 days to evaluate the ~~program~~ regional water supply plans. Comments must be received from the Department of Health or other agency by the deadline stipulated in the written notification from the ~~board~~ department.

C. The ~~board~~ department will assess the compliance of submitted ~~programs~~ regional water supply plans with these regulations. The ~~board~~ department shall prepare a tentative statement of findings on whether the ~~program~~ regional water supply plan has demonstrated compliance with the following:

1. All elements of a ~~local-program~~ regional water supply plan identified in 9VAC25-780-50 have been submitted;
2. The ~~program~~ regional water supply plan was developed through a planning process consistent with this chapter;
3. The results of any evaluation conducted pursuant to subsection G of this section have been appropriately accommodated;
4. The existing sources information complies with 9VAC25-780-70;
5. The existing water use information complies with 9VAC25-780-80;
6. The existing resources information complies with 9VAC25-780-90;
7. The projected water demand is based on an accepted methodology and complies with 9VAC25-780-100;
8. The water demand management information complies with 9VAC25-780-110;
9. The drought response and contingency plan complies with 9VAC25-780-120;
10. The region's water supply risks have been identified and regional strategies to address those risks have been proposed and comply with 9VAC25-780-125;
11. ~~The statement of need complies with 9VAC25-780-130~~ A9VAC25-780-100 H;
12. ~~When required, the alternatives comply analysis complies with 9VAC25-780-130~~ 9VAC25-780-100;
13. The regional water supply plan demonstrates sufficient cross-jurisdictional coordination between local governments and consultation with stakeholders during regional water supply plan development in accordance with 9VAC25-780-50; and
14. ~~The local-program~~ regional water supply plan is consistent with 9VAC25-390-20, § 62.1-11 of the Code of Virginia and Chapter 3.2 (§ 62.1-44.36 et seq.) of Title 62.1 of the Code of Virginia.

D. If the ~~board's~~ department's tentative decision is to find the ~~local-program~~ regional water supply plan in compliance with subsection C of this section, the ~~board~~ department shall provide public notice of its findings pursuant to 9VAC25-780-150.

E. If the tentative decision of the ~~board~~ department is to find the ~~local-program~~ regional water supply plan in noncompliance with ~~subsection C of this section~~ this chapter, the ~~board~~ department shall identify (i) the reason for the finding of noncompliance, (ii) ~~what is required for compliance,~~ and (iii) ~~and~~ the right to an informational proceeding under Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of the Virginia Administrative Process Act.

F. The ~~board~~ department shall make a final decision on whether the ~~local-program~~ regional water supply plan is in compliance with this chapter after completing review of the submitted ~~program~~ regional water supply plan, any agency comments received, and any public comment received from a public meeting held pursuant to 9VAC25-780-160.

G. In conjunction with the compliance determination made by the ~~board~~ department, the state will develop additional information and conduct additional evaluation of local or regional alternatives in order to facilitate continuous planning. This additional information shall be included

in the State Water Resources and Supply Plan and ~~used by~~ made available to localities for use in their ~~program~~ planning. This information, developed by the department, shall include:

1. ~~A cumulative demand analysis, based upon information contained in the State Water Resources Plan and other sources.~~ An estimate of current water withdrawals and use for agriculture, domestic use, and other significant categories of water users;
2. ~~The evaluation of alternatives prepared pursuant to 9VAC25-780-130 B and CA~~ projection of water withdrawals and use by agriculture, industry, domestic use, and other significant categories of water users;
3. ~~The evaluation of potential use conflicts among projected water demand and estimates of requirements for in-stream flow;~~ and An estimate, for each major river and stream, of the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays and estuaries;
4. ~~An evaluation of the relationship between the local plan and the State Water Resources Plan.~~ An evaluation, to the extent practicable, of the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions;
5. An evaluation, in cooperation with the Virginia Department of Health and local water supply managers, of the current and future capability of public water systems to provide adequate quantity and quality of water;
6. An estimate, using a data-driven method that includes multiple reasonable assumptions about supply and demand over varying time frames, of the risk that each locality and region will experience water supply shortfalls; and
7. An evaluation, to the extent practicable, of hydrologic, environmental, economic, social, legal, and jurisdictional aspects identified.

H. ~~The board~~ department may facilitate information sharing and discussion among localities when potential conflicts arise with regard to demands upon a source.

I. A ~~local program's~~ regional water supply plan's information shall be included in the State Water Resource and Supply Plan when determined to be in compliance by the ~~board~~ department.

9VAC25-780-150. Public notice and public comment period.

A. ~~The board~~ department shall give public notice on the department website for every tentative and final decision to determine ~~local program~~ regional water supply plan compliance.

B. ~~The board~~ department shall give public notice to the Department of Health, the Department of Conservation and Recreation, the Marine Resources Commission, the Department of Historic Resources, and the Department of ~~Game and Inland Fisheries~~ Wildlife Resources for every tentative and final decision on ~~program~~ regional water supply plan compliance. The agencies shall have 90 days to submit written comment. At the request of the applicant, the ~~board~~ department will convene a technical evaluation committee meeting to facilitate receipt of these comments.

C. ~~The board~~ department shall provide a comment period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative or final decision. All written comments submitted during the comment period shall be retained by the ~~board~~ department and considered during its final decision.

D. Commenters may request a public meeting when submitting comments. In order for the ~~board~~ department to grant a public meeting, there must be a substantial public interest and a factual basis upon which the commenter believes that the proposed ~~program~~ regional water supply plan might be contrary to the purposes stated in 9VAC25-780-20.

E. The contents of the public notice of a proposed ~~program~~ regional water supply plan compliance determination shall include:

1. Name(s) and address(es) of the locality(ies) that submitted the local or regional water plan;
2. Brief synopsis of the proposed plan including any identified future alternatives;
3. The name(s) of the principal water supply sources;
4. A statement of the tentative determination to certify or deny consistency with the regulation;
5. A brief description of the final determination procedure;
6. The address, e-mail address and phone number of a specific person at the state office from whom further information may be obtained; and
7. A brief description on how to submit comments and request a public meeting.

9VAC25-780-160. Public meetings.

A. Public notice of any public meeting held pursuant to 9VAC25-780-150 shall be circulated as follows:

1. Notice shall be published on the department website;
2. Notice shall be published once in a newspaper of general circulation in ~~the~~ each county, city, or town where the ~~local or regional water~~ supply plan is in effect; and
3. Notice of the public meeting shall be sent to all persons and government agencies that requested a public meeting or have commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 through 3 of this section at least 30 days in advance of the public meeting.

C. The content of the public notice of any public meeting held pursuant to this section shall include at least the following:

1. Name and address of the localities who prepared the ~~program~~ regional water supply plan;
2. The regional planning area covered by the ~~program~~ regional water supply plan;
3. A brief reference to the public notice issued for the comment period including the date of issuance unless the public notice includes the public meeting notice;
4. Information regarding the time and location for the public meeting;
5. The purpose of the public meeting;
6. A concise statement of the relevant water resources planning, water quality, or fish and wildlife resource issues raised by the persons requesting the public meeting;
7. Contact person and the address, e-mail address and phone number of the department office at which the interested persons may obtain further information or request a copy of the draft statement of findings prepared pursuant to 9VAC25 780-140 D; and
8. A brief reference to the rules and procedures to be followed at the public meeting.

9VAC25-780-180. Enforcement.

A. Enforcement of this chapter will be in accordance with §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32 of the Code of Virginia.

B. A local government shall not be liable for the inability of the local government or its regional planning unit to comply with any requirement of this chapter caused by the failure or refusal of any other local government, community water system or self-supplied user to comply with any provisions of this chapter.



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Proposed Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC25-780
VAC Chapter title(s)	Local and Regional Water Supply Planning
Action title	Amendments pursuant to Chapter 1105 of the 2020 Acts of Assembly
Date this document prepared	May 25, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Local and Regional Water Supply Regulation (9VAC25-780) was promulgated in 2005 in accordance with section 62.1-44.38:1.A of the Code of Virginia, which required the State Water Control Board (Board) to establish a comprehensive water supply planning process for the development of local, regional and state water supply plans (plan). This legislative action and subsequent regulation were in response to the 2001-2002 drought during which many water supplies within the Commonwealth experienced inadequate supply to meet demands.

Under the current regulation, localities can choose to develop a plan independently (local plan) or may choose to plan regionally with other localities (regional plan). In total, 48 water supply plans were submitted in 2008, of which 10 were local plans and 38 were regional plans with the majority of those consisting of one county and one or more cities or incorporates towns located within the boundaries of the county. Planning regions were not specifically determined based on river basin or with respect to shared sources of water supply.

2020 amendments to §§ 62.1-44.36, 62.1-44.38, and 62.1-44.38:1 of the Code of Virginia direct the Board to encourage the development of cross-jurisdictional water supply projects, and to adopt regulations designating regional planning areas based primarily on river basin. The amendments also mandate that each locality in a particular regional planning area shall participate in cross-jurisdictional, coordinated water resource planning, and all localities in each area shall together develop and submit a single regional plan. The bill directs the Department of Environmental Quality (Department) to facilitate the creation of regional water plans by ensuring sufficient coordination among localities, providing planning and other assistance, and ensuring that each regional plan identifies risks and proposes cost-effective strategies in response. In 2022, further amendments to § 62.1-44.38:1 require the regulation to provide a mechanism for localities to request a change of its designated regional planning area to an adjoining planning area that is based on water supply source, river basin, or existing or planned cross-jurisdictional relationship.

Additionally, this regulatory action changes the existing definition of the State Water Control Board within the regulation to address changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657). SB 657 was passed during the 2022 Session of the General Assembly. This bill limits the authority of the State Water Control Board under Chapters 3.1 (State Water Control Law), 24 (Surface Water Management Areas) and 25 (Ground Water Management Act of 1992), to the issuance of regulations and transfers the Board’s existing authority to issue permits and orders to the Department of Environmental Quality. The Governor signed this bill into law on April 11, 2022 and these changes will become effective July 1, 2022.

This regulatory proposal is required to amend the existing Local and Regional Water Supply Plan Regulation to reflect the amendments made to the Code of Virginia and to conform the existing regulation to changes in Code.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

Board – State Water Control Board

Department – Department of Environmental Quality

Plan – Regional Water Supply Plan

RAP- Regulatory Advisory Panel

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

This regulatory action is in response to the directive created by Chapter 1105 (HB524) of the 2020 Acts of Assembly and Chapter 331 (HB1297) of the 2022 Acts of Assembly that requires the Board to adopt regulations designating regional planning areas based primarily on river basin and provide a mechanism for localities to request a change in regional planning areas respectively and Chapter 356 (SB 657) of the 2022 Acts of Assembly that limits the authority of the State Water Control Board to the issuance of regulations and transfers the Board’s existing authority to issue permits and orders to the Department of Environmental Quality.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Amendments to section 62.1-44.38:1 of the Code of Virginia (Chapter 1105 of the 2020 Acts of Assembly) direct the Board to adopt regulations designating regional planning areas based primarily on river basins, and state that the regulations shall identify the particular regional planning area in which each locality shall participate, and which local stakeholder groups shall or may participate in coordinated water resource planning. The amendments also require each locality to participate in cross-jurisdictional, coordinated water resources planning, and that each regional planning area submit a singly jointly produced regional water supply plan, which shall clearly identify the region's water supply risks, propose cost-effective regional strategies to address these risks, and comply with all other applicable criteria and guidelines developed by the Board. Amendments to section 62.1-44.38 direct the Board to predict the risk that each locality and region will experience water supply shortfalls, and require the Board to direct the Department in its facilitation of regional planning efforts. Additional amendments to § 62.1-44.38:1 (Chapter 331 (HB1297) of the 2022 Acts of Assembly) require the regulation to provide a mechanism for localities to request a change of its designated regional planning area to an adjoining planning area that is based on water supply source, river basin, or existing or planned cross-jurisdictional relationship.

Additionally, this regulatory action changes the existing definition of the State Water Control Board within the regulation to address changes resulting from Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657).

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of the proposed amendments is to designate regional planning areas based primarily on river basins and to provide a framework to facilitate improved cross-jurisdictional regional planning as directed by Chapter 1105 of the 2020 Acts of Assembly. Water supply plans submitted under the current regulation were largely submitted by a single locality or a single locality and any incorporated towns and cities within its boundaries. This approach results in localities planning within their own political boundaries, which may not represent the most efficient or effective way to address shared water sources that cross jurisdictional boundaries.

Regional planning enables localities and other water users to assess water sources in the context of their shared use with others in the region. This approach will promote a more accurate assessment of water sources to meet demands into the future, and promotes cost-effective regional projects and strategies to address water supply shortfalls and risks to water supply such as drought, while also improving the capability of localities to more efficiently pursue new economic development opportunities that often require significant water capacity.

Additionally, the statute requires localities to invite stakeholders including economic development organizations, industrial, commercial, and agricultural water users, among others to participate in plan development. While the previous regulation required a public involvement process, the proposed regulation will allow interested parties to participate more directly.

The goals of the proposed amendments are to require that localities plan regionally and identify regional planning areas for each locality while providing a process for localities to request a change in planning area, develop requirements for identification of water supply risks and strategies to address those risks, and revise the water supply plan development, submission, and review procedures to align with the new requirements including clarifying the roles and responsibilities for localities, stakeholders, and the Department.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed regulation establishes regional planning areas, identifies the particular regional planning area in which each locality shall participate, identifies a procedure for localities to request a change to its planning area, and requires localities to invite stakeholder groups to participate in coordinated resource planning. The amendments also incorporate language to address new statutory requirements that the Department facilitate regional water planning efforts, ensure localities coordinate in the development of water supply plans, prioritize allocation of funding to localities that participate in regional planning, and provide estimates of water supply shortfalls for each locality and region. The amendments also require that each regional water supply plan clearly identify the regional planning area's water supply risks and propose regional strategies to address those risks. The proposed amendments also revise the existing water supply plan development, submission, and review procedures to accommodate regional plans and other new requirements discussed above, and clarifies the roles of localities, stakeholders, and the Department in the regional planning process.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Advantages from the proposed regulatory change for the public, including private citizens and businesses include a regional water supply plan scope that addresses sources within a basin that cross jurisdictional boundaries, increased opportunities to participate in the water supply planning process, the potential for more resilient and efficient water supply systems that include regional projects in any evaluation of future infrastructure development, and more consideration of potential risks to water supply beyond deficits. Planning that includes coordinated evaluation of common regional water sources at the regional scale allows for improved optimization of the use of these resources and may increase water availability for future water needs.

Advantages for the agency and Commonwealth include the potential for water supply systems to be more resilient to drought and other water supply risks, requiring fewer emergency related permit modifications or variances. Planning that considers cumulative demands, water supply risks, and promotes regional strategies to addressing water supply deficits and risks establishes local certainty, allowing faster

response to economic development opportunities. Effects of this could include smoother and more efficient permit application processes for water supply projects, fewer variances or emergency actions due to drought or other acute conditions, and more efficient and cost effective use of state and local resources with respect to water supply infrastructure. The proposed amendments will reduce the number of plan submittals from 48 under the current framework to 26, potentially reducing the staff time required for certain administrative tasks related to plan development and review.

Advantages to the regulated community including local governments, water authorities, self-supplied water users, and other stakeholders that elect to participate in the planning process include a more robust water supply plan that addresses shared water resources that cross local government boundaries, considers water supply risks and strategies. Clarifications to the plan development, submittal, and review process will address areas of concern or confusion identified during implementation of the existing regulation. Stakeholders that choose to participate in the plan development have more opportunities to ensure their needs and concerns are considered. Planning regionally may also assist localities in identifying or strengthening regional partnerships to better manage new demands associated with growth or unexpected increases in demand from new economic development opportunities. Potential disadvantages to this group include eliminating the ability to plan locally for localities that prefer that approach and the potential for additional administrative complexity in plan development as a result of planning with a greater number of localities and stakeholders.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There is no federal statute or regulation for water supply planning and therefore the proposed regulation does not introduce requirements more restrictive than federal requirements. Federal law reserves water supply planning and allocation decisions to the states.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No state agencies are expected to be particularly affected.

Localities Particularly Affected

All counties, cities, and incorporated towns will be affected by this regulatory change but none are expected to be particularly affected.

Other Entities Particularly Affected

No other entities particularly affected.

For purposes of "Locality Particularly Affected" under the Board's statutes

There is no locality particularly affected under the Board's statutes.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>No economic impacts expected for the Department.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>No economic impacts expected for other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Planning based on river basin should result in a more robust plan that addresses shared resources across localities. May reduce future conflicts over shared resources, permitting challenges, and improve cost-efficiency of new projects via regional cooperation. Such outcomes are benefits to the management of the resource in a manner that meets water supply needs while minimizing impacts to other beneficial uses, which is a benefit to all agencies overall.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>No explicit change in costs are expected for localities as a result of this action but regional planning may require additional facilitation that increases staff time. This will vary significantly across localities as some localities already planned regionally or will be planning in planning areas largely overlapping existing planning structures such as PDC's.</p> <p>The original regulation included grant funding for localities to develop water supply plans. While including grant funding in this statutory change was discussed, it did not ultimately make it into the bill and therefore is not available currently.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Planning based on river basin should result in a more robust plan that addresses shared</p>

	<p>resources across localities. May reduce future conflicts over shared resources, permitting challenges, and improve cost-efficiency of new projects via regional cooperation.</p> <p>Clarifications to plan development, submission, and review processes will help localities manage these tasks.</p>
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Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Other groups that may be affected include the public, water users, economic and environmental groups and other stakeholders who would have the option to participate in planning process more directly than in the current regulation. There is not expected to be direct impacts outside of this new voluntary participation.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>As discussed above, only those who wish to participate would be affected.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>No additional mandated costs are expected for the public, businesses, or other stakeholder groups. Any impact to time or resources would be as a result of volunteering to participate.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit to the public and stakeholders groups will be the option to participate more directly in the planning process.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Alternatives were not considered as the General Assembly directed the development of regulations for this purpose through Chapter 1105 of the 2020 Acts of Assembly and Chapters 331 and 356 of the 2022 Acts of Assembly.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The proposed regulation is in response to the directive created by Chapter 1105 of the 2020 Acts of Assembly and Chapter 331 of the 2022 Acts of Assembly that requires the Board to adopt regulations designating regional planning areas based primarily on river basin. However, during the development of the proposed amendments, DEQ reviewed compliance requirements and the plan development, submission, and review process. While compliance requirements related to the components of a water supply plan were not changed, the process was streamlined in several ways including: 1) clarifying which requirements were to be completed by localities and which by the regional planning unit as a whole, 2) clarifying the extent and type of information that is expected to be collected (readily available) 3) incorporating new requirements for the Department in convening and facilitating the plan development process, 4) clarifying responsibility for compliance in the event of a single locality refusing to participate, and 5) clarifying public participation processes.

Changes made in response to Chapter 356 of the 2022 Acts of Assembly are mandated by that statutory change and so no alternative regulatory methods were considered.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

No periodic review was announced during the NOIRA stage.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Alfred Scott, City of Richmond DPU	Recognizes importance of regional planning, requests that process consider existing regional partnerships, water supply risks should have clear objective criteria, requests appointment of Ross Phillips to regulatory advisory panel (RAP).	Feedback taken into consideration during RAP process. Ross Phillips was appointed to the RAP.
Timothy A Mitchell, Virginia Municipal Drinking Water Association	Requests Scott Morris, Assistant Director of Utilities, Operation and Maintenance, Chesterfield County to serve on RAP.	Scott Morris was appointed to the RAP.
Andrea Wortzel, MissionH20	Support of regional planning in general, "risk" must be defined and highest priority should be for human consumption, requirement for inviting stakeholders should be flexible to allow regions to develop a process that reflects the region, supports appointment of Greg Prelewicz, Fairfax Water, and Whitney Katchmark, Hampton Roads Planning District Commission, to the RAP.	Feedback taken into consideration during RAP process. Greg Prelewicz and Whitney Katchmark appointed to the RAP.
Norm Goulet, Northern Virginia Regional Commission	Requests appointment to RAP.	DEQ received requests from multiple stakeholders representing the Northern Virginia region and did not appoint Mr. Goulet to the RAP to ensure that no region received significantly more representation than others.
Jamie Bain Hedges, Fairfax Water	Background on Fairfax Water and involvement with existing planning structures. Requests appointment of Greg Prelewicz to the RAP.	Greg Prelewicz was appointed to the RAP.
Whitney Katchmark, Hampton Roads Planning District Commission	Requests appointment of Whitney Katchmark to the RAP.	Whitney Katchmark was appointed to the RAP.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the State Water Control Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Ryan Green, Central Office, 1111 East Main St. Suite 1400, Richmond, VA, 23218 Phone: (804) 698-4258; E-mail: ryan.green@deq.virginia.gov; FAX: (804) 698-4178. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
780-10 A		Application requirements	Clarification of affected entities by deleting the phrase "counties, cities, and towns", and replacing with "local governments", identifying the requirement for all localities to participate in regional planning and submit a single jointly produced plan, and addition of language to further clarify participants and their submission requirements. Changes to regulation required by statutory changes.
780-10 C	780-10 B	Application requirements.	Renumbering to reflect shift of language from 780-10 B into 780-10 A. Addition of language to clarify regulation does not alter existing contractual rights related to water supplies.

780-10 D	780-10 C	Application requirements.	Renumbering section.
780-20		Purpose of chapter.	Addition of language to reflect statutory changes with respect to the purpose of the chapter, which is to establish a comprehensive water supply planning process for the collection of certain data by localities and the development of regional and state water supply plans.
780-30		Definitions.	Revised definition of "Beneficial Use" to reference its surface water and its groundwater related definition as found in 9VAC25-210-10 and 9VAC25-610-10, respectively.
780-30		Definitions.	Definition of "Board" revised to address statutory changes in Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657).
780-30		Definitions.	Deletion of term "conservation" – Replaced with more focused definition for "water conservation".
780-30		Definitions.	Deletion of term "local program" – replaced with "regional water supply plan". Change necessary to comply with statutory requirement for regional plans.
780-30		Definitions.	Deletion of the term "planning area" – replaced with "regional planning area". Change necessary to comply with statutory requirement for regional plans.
780-30		Definitions.	Clarification of the term "planning period" to a 30 year time frame and to replace the term "locality" with the phrase "local governments and regional planning units".
780-30		Definitions.	Addition of the term "regional planning area". Change necessary to comply with statutory requirement for regional plans.
780-30		Definitions.	Clarification of the term "regional planning unit" to include references to "water authorities"; "stakeholders" and "planning district commissions" and to correct reference to the "regional water supply plan". Change necessary to comply with statutory requirement for regional planning to allow participation of other stakeholders. Inclusion of water authorities at recommendation of RAP.
780-30		Definitions.	Revision and clarification of the original term "regional water plan".
780-30		Definitions.	Revision of definition of "self-supplied user" to remove language stating they receive no water from other systems. In some cases a self-supplied user may receive water from another system while still operating their own system.

780-30		Definitions.	Addition of the term "stakeholder".
780-30		Definitions.	Addition of term "State Water Resources and Supply Plan". This definition clarifies the scope of an existing Department report produced using data collected from water supply plans and other sources.
780-30		Definitions.	Correction of state agency name and inclusion of the term "beneficial" in the definition of "Technical evaluation committee".
780-30		Definitions.	Revise the term "unaccounted for losses" to "unaccounted for water" to reflect current term of use.
780-30		Definitions.	Addition of term "water authority".
780-30		Definitions.	Replacement of term "conservation" with "water conservation".
780-30		Definitions.	Clarification of term "water demand management" to include the concept of water use efficiency and to delete the reference to "a local program".
780-30		Definitions.	Deletion of the term "water plan" – replaced with the term "regional water supply plan. Change necessary to comply with statutory requirement for regional plans.
780-30		Definitions.	Expansion of the term "water sources" to include "springs" and "aquifers" as they are also sources that should be considered part of this definition.
780-30		Definitions.	Addition of a definition for "water supply risk".
780-40		Program development.	Section Repealed. Requirements now included in 780-50.
	780-45	<u>Designation of Regional Planning Areas.</u>	Addition of new section entitled: "Designation of Regional Planning Areas" which identifies the regional planning areas and the members off those planning areas for purposes of this regulation and the process for a locality to request a change in the planning area. This new section was added to comply with changes made to the statute.
780-50		<u>Preparation of local information and regional water supply plan;</u> <u>submission of a program.</u> <u>submission of requirements for a regional water supply plan.</u>	Title of section revised to indicate the section will address both the local information and regional water supply plan requirements.
780-50 A		<u>Preparation of local information and regional water supply plan;</u> <u>submission of a program.</u> <u>submission of requirements</u>	Clarification of local government responsibilities. Changes throughout this section are intended to clarify which responsibilities shall be completed by

		<u>for a regional water supply plan.</u>	local governments and which shall be completed at the regional scale.
780-50 B		<u>Preparation of local information and regional water supply plan;</u> submission of a program. <u>submission of requirements for a regional water supply plan.</u>	Removal of language related to submission deadlines that are no longer applicable. Clarification of responsibilities of regional planning units and the department including new requirements to streamline the plan development process including designation of representatives for each local government and convening "kick-off" meetings. These changes were recommended by the RAP to clarify the process. New requirements for increased stakeholder involvement as required by statutory changes also added in this section.
780-50 C		<u>Preparation of local information and regional water supply plan;</u> submission of a program. <u>submission of requirements for a regional water supply plan.</u>	Clarification of information collection requirements for local governments and what kinds of information should be considered during plan development.
780-50 C	780-50 D	<u>Preparation of local information and regional water supply plan;</u> submission of a program. <u>submission of requirements for a regional water supply plan.</u>	Creation of a new subsection heading for clarification. Revisions to the listed elements required to be in each regional water supply plan. Additional elements and the deletion of several elements to reflect changes elsewhere in the regulation.
	780-50 E	<u>Preparation of local information and regional water supply plan;</u> submission of a program. <u>submission of requirements for a regional water supply plan.</u>	Added language to clarify that public process requirements must be completed and all local governments must adopt a resolution authorizing the submission of the plan prior to submitting to the Department.
	780-50 F	<u>Preparation of local information and regional water supply plan;</u> submission of a program. <u>submission of requirements for a regional water supply plan.</u>	Added language outlining process to be followed by regional planning unit when a local government fails to adopt the resolution.
	780-50 G	<u>Preparation of local information and regional water supply plan;</u> submission of a program. <u>submission of requirements for a regional water supply plan.</u>	Added language identifying consensus requirements. These changes are to address how disagreements or lack of consensus should be handled. The changes acknowledge that full consensus may not always be possible in a regional scope.
	780-50 H	<u>Preparation of local information and regional water supply plan;</u>	Added requirements for appending the identified documents and supporting materials to the regional water supply

		<u>submission of a program. submission of requirements for a regional water supply plan.</u>	plan. These materials were previously considered part of the "local program" which as a concept has been replaced and simplified to a regional water supply plan.
780-50 D	780-50 I	Preparation of <u>local information and regional water supply plan</u> ; <u>submission of a program. submission of requirements for a regional water supply plan.</u>	Revision of numbering to account for inclusion of new subsections and clarification of 5-year review process for a regional water supply plan. Replacement of "board" by "department" to address the changes to statutory law. Clarification that supplements to regional water supply plans submitted during 5 year review need not be public noticed.
780-50 E	780-50 J	Preparation of <u>local information and regional water supply plan</u> ; <u>submission of a program. submission of requirements for a regional water supply plan.</u>	Revision of numbering to account for inclusion of new subsections and clarification of 10-year resubmission process for a regional water supply plan. Replacement of "board" by "department" to address the changes to statutory law. Added requirements for convening a kick-off meeting no later than 180 days prior to last compliance determination to be consistent with process for initial submission.
	780-55	<u>Public participation in regional water supply plans.</u>	Addition of new section to clarify public participation requirements previously contained in 780-50. These changes address input received that the existing requirements were unclear and also outlines how the public can participate in plan development to reflect changes in statute that require regional planning units to allow interested parties to participate more directly.
	780-55 A	<u>Public participation in regional water supply plans.</u>	Identification of public notice requirements during plan development. These changes are intended to clarify existing requirements that were unclear according to feedback received by the Department.
	780-55 B	<u>Public participation in regional water supply plans.</u>	Identification of public notice of public informational meeting requirements. These changes are intended to clarify existing requirements that were unclear according to feedback received by the Department.
	780-55 C	<u>Public participation in regional water supply plans.</u>	Public informational meeting requirements. These changes are intended to clarify existing requirements that were unclear according to feedback received by the Department.
	780-55 D	<u>Public participation in regional water supply plans.</u>	Requirements to accept additional written comments. These changes are intended to clarify existing requirements that were

			unclear according to feedback received by the Department.
	780-55 E	<u>Public participation in regional water supply plans.</u>	Requirements for handling written comments. These changes are intended to provide a process for administering public comments regionally or locally.
	780-55 F	<u>Public participation in regional water supply plans.</u>	New language requiring regional planning units to give due consideration to public comments received and clarification that any revisions to the regional water supply plan in response to comments need not be publicly noticed again.
780-60		State role in program <u>regional water supply plan preparation.</u>	Revision of Section title related to the state role in regional water supply plan preparation.
780-60		State role in program <u>regional water supply plan preparation.</u>	Clarification of the state role in the development of regional water supply plans/requirements for the department and necessary renumbering of subsections. Changes are primarily to address new language in statute identifying Department responsibilities. Replacement of "board" by "department" to address the changes to statutory law.
780-70 A		Existing water source information.	Changes throughout section 70 are primarily to clarify whether information requirements are local or regional responsibility, and to clarify Department responsibilities. Clarification of local government requirement to provide existing water source information.
780-70 B		Existing water source information.	Clarification of the requirement for local governments to provide existing water source information for community systems using groundwater; replacement of the term "design capacity" with the term "designed related to average daily and maximum daily withdrawals as a result of feedback received by the Department that the original language was unclear.
780-70 C		Existing water source information.	Clarification of need for local governments to provide existing water source information for community water systems using surface water reservoirs and replacement of the phrase "design capacity" with the term "designed" as it relates to average daily and maximum daily withdrawals. Replacement of "board" by "department" to address the changes to statutory law.
780-70 D		Existing water source information.	Clarification of the need for local governments to provide existing water source information for community water

			systems using stream intakes and the replacement of the phrase "design capacity" with the term "designed" as it relates to the average and maximum daily withdrawals from the stream. Replacement of "board" by "department" to address the changes to statutory law.
780-70 E		Existing water source information.	Clarification language added related to local government review of data for self-supplied users of surface water provided by the department. Addition of numbering sequence to clarify requirements. Replacement of the phrase "design capacity" with the term "designed". Replacement of "board" by "department" to address the changes to statutory law.
780-70 F		Existing water source information.	Clarification language added related to local government review of data for self-supplied users of ground water provided by the department. Addition of numbering sequence to clarify requirements. Replacement of the phrase "design capacity" with the term "designed". Replacement of "board" by "department" to address the changes to statutory law.
780-70 G		Existing water source information.	Clarification language added related to local government review of data for existing contractual agreements provided by the department. Addition of numbering sequence to clarify requirements.
780-70 H		Existing water source information.	Clarification language added related to inclusion of an estimate of the amount of water available to be purchased from outside the regional water supply plan.
780-70 I		Existing water source information.	Clarification language added related to local government review of data for agricultural users provided by the department. Addition of numbering sequence to clarify requirements.
780-70 J		Existing water source information.	Clarification language added related to local government providing an estimate of the number of residences and business that are self-supplied by individual wells.
780-70 K		Existing water source information.	Section deleted as this requirement has now been included in section 125.
780-80 A		Existing water use information.	Changes throughout section 80 are primarily intended to clarify Department and local government responsibilities. Clarification of requirement for each local government to provide information on existing water use information.
780-80 B		Existing water use information.	Clarification of requirements for a regional water supply plan to include

			information for each community water system.
780-80 C		Existing water use information.	Clarifying language added related to information to be provided by the department and any additional locally identified data related to water use by self-supplied nonagricultural users of surface and ground water.
780-80 D		Existing water use information.	Clarifying language added related to information to be provided by the department and any additional locally identified data related to water use by self-supplied agricultural users of surface and groundwater.
780-80 E		Existing water use information.	Clarifying language added related to information to be provided by the department and any additional locally identified data related to water use by self-supplied users of groundwater.
780-90		Existing <u>water</u> resource information.	Clarification/Addition of the term "water" in title of section.
780-90 A		Existing <u>water</u> resource information.	Addition of clarifying language related to requirements of existing water resource information for local governments within a regional planning area.
780-90 B		Existing <u>water</u> resource information.	Replacement of the term "program" with the phrase "regional water supply plan". Addition of clarifying language related to information provided by the department. Revision requirement related threats to water quality and quantity to instead focus on "instream flow" information available from the Department. Previous language was too vague and expectation was unclear.
780-100		Projected water demand information; <u>Statement of need and alternatives.</u>	Revision of section title to reflect addition of content.
780-100 A		Projected water demand information; <u>Statement of need and alternatives.</u>	Changes made in section 100 are largely to clarify local government responsibilities. Addition of clarification of requirement to provide projections of future water demand. Inclusion of the term "regional water supply plan". Correction of reference.
780-100 B		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term "regional water supply plan". Revision of the length of water demand estimates to 30 years instead of 30 to 50 years. Recommendations from stakeholders and program staff indicate that 30 year timelines were the most common and feasible and standardization would be appropriate.

780-100 C		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term "regional water supply plan".
780-100 D		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term "regional water supply plan". Deletion of the term "proposed" as it relates to service areas. Addition of requirement related to projected water demands.
780-100 E		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term "regional water supply plan" and other minor clarifications.
780-100 F		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term "regional water supply plan". Clarification of requirements.
780-100 G		Projected water demand information; <u>Statement of need and alternatives.</u>	Inclusion of the term "regional water supply plan". Clarification of requirements.
	780-100 H	Projected water demand information; <u>Statement of need and alternatives.</u>	Added language identifying local and regional responsibilities in the preparation of a "statement of need" and the identification of requirement for alternatives analysis for deficits to assess range of potential alternative sources of supply.
	780-100 I	Projected water demand information; <u>Statement of need and alternatives.</u>	Clarifications to requirements for an alternatives analysis and local and regional responsibilities therein. These changes were made based on recommendations by stakeholders to clarify the existing alternative analysis requirements and to reflect a regional scope.
780-100 H	780-100 J	Projected water demand information; <u>Statement of need and alternatives.</u>	Revised subsection numbering to accommodate addition of new subsections. Inclusion of the term "regional water supply plan". Clarification of requirements.
780-100 I	780-100 K	Projected water demand information; <u>Statement of need and alternatives.</u>	Revised subsection numbering to accommodate addition of new subsections. Inclusion of the term "regional water supply plan".
	780-110 A	Water demand management information.	Addition of new Subsection A related to local government providing information on existing water demand management plans or practices.
780-110 A	780-110 B	Water demand management information.	Renumbering of subsection to account for addition of new subsection. Inclusion of the term "regional water supply plan". Clarification of requirements.
780-110 B	780-110 C	Water demand management information.	Renumbering of subsection to account for addition of new subsection. Clarification of requirements.
780-120 A		Drought response and contingency plans.	Addition of subsection numbering to account for addition of new subsections.

			Clarification of local government responsibility in developing a drought response and contingency plan.
	780-120 B	Drought response and contingency plans.	Addition of language related to conflicts between subsection A requirements and any condition of a permit. This language is intended to address that some permits require drought plans that may already be in existence and must be rectified with any plan developed in response to this chapter.
	780-120 C	Drought response and contingency plans.	Addition of language related to the development of a regional drought response and contingency plan. This language allows regional planning units to evaluate whether a regional drought plan is feasible and develop one if so.
	780-120 D	Drought response and contingency plans.	Addition of language related to the inclusion of cross-jurisdictional coordination efforts on drought response.
	780-125	<u>Identification of water supply risks and proposed regional strategies.</u>	Addition of new section related to the "identification of water supply risks and proposed regional strategies". This new section was added to address new statutory requirements for regional plans to identify water supply risks and propose regional strategies to address them. The section includes a list of risks for regional planning units to consider, although not all risks in the list may be applicable to each regional planning unit. In addition, regional planning units or local governments may identify risks not listed in the regulation.
780-130		Statement of need and alternatives.	Section repealed. Requirements now contained in 780-100.
780-140		Review of local programs regional water supply plans.	Replacement of "local programs" with "regional water supply plans".
780-140 A		Review of local programs regional water supply plans.	Replacement of "local programs" with "regional water supply plans". Correction of title of "State Plan". Replacement of "board" by "department" to address the changes to statutory law.
780-140 B		Review of local programs regional water supply plans.	Replacement of "local programs" with "regional water supply plans". Replacement of "board" by "department" to address the changes to statutory law.
780-140 C		Review of local programs regional water supply plans.	Replacement of "local programs" with "regional water supply plans": Item renumbering to accommodate additional requirements to reflect new requirements such as water supply risks. Correction of reference. Replacement of "board" by "department" to address the changes to statutory law.

780-140 D		Review of local programs <u>regional water supply plans.</u>	Replacement of "local programs" with "regional water supply plans". Replacement of "board" by "department" to address the changes to statutory law.
780-140 E		Review of local programs <u>regional water supply plans.</u>	Replacement of "local programs" with "regional water supply plans". Replacement of "board" by "department" to address the changes to statutory law.
780-140 F		Review of local programs <u>regional water supply plans.</u>	Replacement of "local programs" with "regional water supply plans". Replacement of "board" by "department" to address the changes to statutory law.
780-140 G		Review of local programs <u>regional water supply plans.</u>	Replacement of "local programs" with "regional water supply plans". Clarification of information to be developed by the department. Replacement of "board" by "department" to address the changes to statutory law.
780-140 H		Review of local programs <u>regional water supply plans.</u>	Replacement of "board" by "department" to address the changes to statutory law.
780-140 I		Review of local programs.	Replacement of "local programs" with "regional water supply plans". Correction of title of "State Plan".
780-150 A		Public notice and public comment period.	Replacement of "local programs" with "regional water supply plans". Replacement of "board" by "department" to address the changes to statutory law.
780-150 B		Public notice and public comment period.	Replacement of "local programs" with "regional water supply plans". Replacement of "board" by "department" to address the changes to statutory law. Correction of title of Department of Game and Inland Fisheries to Department of Wildlife Resources.
780-150 C		Public notice and public comment period.	Replacement of "board" by "department" to address the changes to statutory law.
780-150 D		Public notice and public comment period.	Replacement of "local programs" with "regional water supply plans". Replacement of "board" by "department" to address the changes to statutory law.
780-150 E		Public notice and public comment period.	Replacement of "local programs" with "regional water supply plans".
780-160 A 2		Public meetings.	Replacement of "local plan" with "regional water supply plan".
780-160 C		Public meetings.	Replacement of term "program" with "regional water supply plan".
780-180	780-180 A	Enforcement.	Numbering of subsections added to accommodate addition of new subsection.
780-180	780-180 B	Enforcement.	Numbering of subsections added to accommodate addition of new subsection. Addition of language clarifying that a local government shall not be liable if a local government within their regional planning area does not

			comply with requirements within this chapter.
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Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulation will have a direct impact on families.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

TO: The Members of the State Water Control Board
FROM: Jeffery Steers, Director of Regional Operations *Jeffery A. Steers*
DATE: June 22, 2022
**RE: REPORT ON FACILITIES IN SIGNIFICANT NONCOMPLIANCE AND
CHESAPEAKE BAY PRESERVATION ACT PROGRAM NOTICES OF
VIOLATION**

Significant Noncompliance

There were no new facilities reported to EPA on the Quarterly Noncompliance Report as being in significant noncompliance (SNC) for the quarter ending December 31, 2021. The SNC report for the quarter ending March 31, 2022 is currently not available.

Chesapeake Bay Preservation Act Program Notice of Violation

DEQ has not issued any CBPA Program NOV's from February 11, 2022 to May 19, 2022.

**ENFORCEMENT ITEM SUMMARY FORM
STATE WATER CONTROL BOARD MEETING
ON JUNE 22, 2022**

ITEM: LVL Data Center / HITT Contracting, Inc.

DEQ CONTACT: Piedmont Regional Office
Matt Richardson
804-659-2696
Matthew.Richardson@DEQ.Virginia.gov

FACILITY ADDRESS: Prison Road, Mecklenburg County, Virginia

TYPE OF PERMIT OR PROGRAM: Virginia Water Protection (VWP) Program / General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities

STATE WATER AFFECTED: During the 2020 305(b)/303(d) Integrated Water Quality Assessment, the unnamed tributary was not assessed for any Designated Use; it is a Category 3A and Tier 1 waterbody. The discharge is located within the study area for Lower Allen Creek watershed in the Kerr Reservoir Tributaries Bacterial TMDL (SWCB approval 12/7/2017, EPA approval 2/21/2018). The facility was not addressed in the TMDL. The area is designated as Public Water Supply.

PROPOSED BOARD ACTION: Consent Special Order with Civil Charges.

BACKGROUND: HITT Contracting, Inc. (Responsible Party) is the operator of the construction activity at the LVL Data Center located off Prison Road in Mecklenburg County. On February 18, 2020, DEQ granted permit coverage to HITT under the 2019 General VPDES Permit for Discharges of Stormwater from Construction Activities (Registration Number: VAR10M336). No VWP Permit was issued for this project.

DISCUSSION:

DEQ Staff conducted inspections and observed construction stormwater violations on October 1, 2020 and the October 8, 2020 (Consent Order: Paragraph C8 through C10); January 5, 2021 (Consent Order: Paragraph C11 through C14). On May 4, 2021 and July 16, 2021, DEQ Staff observed VWP Violations from sediment discharges that impacted 1,750 linear feet of stream due to improper erosion and sediment control measures (Consent Order: Paragraph C15 through C17). On July 28, 2021 and July 30, 2021 DEQ staff observed additional construction stormwater violations (Consent Order: Paragraph C20 through C22).

On September 4, 2021, restoration of the stream impacts was complete.

On October 6, 2021, DEQ staff conducted an inspection. No additional violations or corrective action was necessary.

CIVIL CHARGES/SUPPLEMENTAL ENVIRONMENTAL PROJECT:

Section D of the Order imposes a total civil charge of \$56,950. An amount of \$32,500 shall be deposited in the Virginia Environmental Emergency Response Fund (VWP Violations) and \$24,450 shall be deposited in the Virginia Stormwater Management Fund (VPDES General Permit Violations).

PREVIOUS ENFORCEMENT ACTIONS: None

PUBLIC COMMENT: The Consent Order was signed on March 1, 2022 by HITT. A public notice for this proposed Consent Order was run on March 30, 2022, in *The Mecklenburg Sun*, in the *Virginia Register* and on the Department's website for a 30 day public comment period ending on April 28, 2022. No public comments were received during the comment period.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 FAX (804) 698-4178

www.deq.virginia.gov

Andrew R. Wheeler
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4000

James Golden
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HITT Contracting, Inc.
For
LVL Data Center**

**Virginia Water Resources and Wetlands Protection Program - Unpermitted;
Construction Stormwater General Permit Registration No. VAR10M336**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and HITT Contracting, Inc., regarding the LVL Data Center, for the purpose of resolving certain violations of State Water Control Law, the applicable permit, and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "2019 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.
3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction Activity" means any clearing, grading or excavating resulting in land disturbance of equal to or great than one acre, or 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 great than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
8. "Facility" or "Site" means the LVL Data Center located off Prison Road in Mecklenburg County, Virginia, from which discharges of stormwater associated with construction activity occur.
9. "HITT" means HITT Contracting, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. HITT is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Impacts" means results caused by those activities specified in §62.1-44.15:20A of the Code of Virginia.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
19. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
22. "Va. Code" means the Code of Virginia (1950), as amended.

23. "VAC" means the Virginia Administrative Code.
24. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
25. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
26. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
27. "VWP" means the Virginia Water Protection program

SECTION C: Findings of Fact and Conclusions of Law

1. HITT is the operator of the LVL DATA Center construction activity located in Mecklenburg County, Virginia, from which stormwater associated with construction activity is discharged.
2. DEQ is the VSMP authority for the Site.
3. HITT applied for and, on February 18, 2020, was granted coverage under the 2019 Permit, VAR10 of the General Permit Regulation. HITT was assigned registration number VAR10M366.
4. The 2019 Permit allows HITT to discharge stormwater associated with construction activities from the Site to an unnamed tributary of Coleman Creek in strict compliance with the terms of the 2019 Permit.
5. The Department has not issued coverage under any permit or certificate to HITT for this Facility other than under the 2019 Permit.

6. State Waters Affected include an unnamed tributary to Coleman Creek – Roanoke River Basin. During the 2020 305(b)/303(d) Water Quality Assessment, the unnamed tributary was not assessed for any Designated Use. It is therefore considered a Category 3A waterbody.

The discharge is located within the study area for Lower Allen Creek watershed in the Kerr Reservoir Tributaries Bacterial TMDL (SWCB approval 12/7/2017, EPA approval 2/21/2018). The facility was not addressed in the TMDL. The unnamed tributary is ephemeral and a Tier 1 water. The area is designated as Public Water Supply.

7. The unnamed tributary to Coleman Creek is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
8. During the October 1, 2020 inspection, DEQ staff observed sediment-laden stormwater runoff flowing from a leaking temporary outfall structure into surface waters. Sediment erosion and deposition resulted from the lack of implementation and maintenance of erosion and sediment controls and other best management practices.

Va. Code § 62.1-44.5(A)(3) states in part: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to:...otherwise alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-870-310(A) states: “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”

9. During October 1, 2020 inspection, DEQ staff observed a sediment basin with a leaking temporary outfall structure which required maintenance.

9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(F)(1) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All

control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

10. During the October 8, 2020 inspection, DEQ staff observed that 600 linear feet of stream channel was impacted with greater than 2 inches of eroded sediment deposition. This impact was not authorized by DEQ.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters...”

11. During the January 5, 2021 inspection, DEQ observed that soil stabilization measures were not applied to sediment basin side slopes and sediment basin outlet protection.

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

9 VAC 25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

9 VAC 25-840-40(7) states: “Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.”

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(B)(2)(c)(8) states: “An approved erosion and sediment control plan, ‘agreement in lieu of a plan,’ or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . .”

2019 Permit Part II(F)(1) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

12. During the January 5, 2021 inspection, DEQ staff observed that slope drains on sediment basin side slopes were not stabilized and eroded.

9 VAC 25-840-40(8) states: “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.”

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(F)(1) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

13. During the January 5, 2021 inspection, DEQ staff observed that stormwater conveyance channels draining to sediment basins were not stabilized and eroded.

9 VAC 25-840-40(11) states: "Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel."

9 VAC 25-840-60(A) states: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

2019 Permit Part II(B)(2)(c)(8) states: "An approved erosion and sediment control plan, 'agreement in lieu of a plan,' or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . ."

2019 Permit Part II(F)(1) states in part: "The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures."

14. During the January 5, 2021 inspection, DEQ staff observed sediment collected at super silt fence below a sediment basin and a stockpile of collected sediment that required removal and proper disposal.

9 VAC 25-840-60(A) states: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

2019 Permit Part II(F)(1) states in part: "The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F . . . All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures."

15. During the May 4, 2021 desktop audit, DEQ staff documented that 125 linear feet of stream channel was impacted with a bentonite slurry. This impact was not authorized by DEQ.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters..."

16. During the July 15, 2021 inspection, DEQ staff observed that 1,130 linear feet of stream channel was impacted with sediment due to a sediment basin failure. This impact was not authorized by DEQ.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters..."

17. On July 26, 2021, it was reported to DEQ, and DEQ staff confirmed, that 495 linear feet of stream channel was impacted with sediment due to an erosion and sediment control measure failure. This impact was not authorized by DEQ.

Va. Code § 62.1-44.15:20(A)(3) states in part: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to... alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-210.50(A) states in part: “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall... discharge any pollutant into, or... otherwise alter the physical, chemical, or biological properties of state waters...”

18. During the July 28, 2021 inspection, DEQ staff observed a sediment basin side slope, the area between sediment basins, and a sediment basin dam slope were not stabilized and eroded.

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(B)(2)(c)(8) states: “An approved erosion and sediment control plan, ‘agreement in lieu of a plan,’ or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . .”

2019 Permit Part II(B)(5)(b)(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site.”

2019 Permit Part II(F)(1-2) states: “SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F. 1. All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures. 2. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as

soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.”

19. During the July 24, 2019 inspection, DEQ staff observed silt fence in need of replacement or maintenance.

9 VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

2019 Permit Part II(F)(1) states: “All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

20. During the July 28, 2021 inspection, DEQ staff observed concrete washout discarded directly on the ground surface and not into a designated concrete washout area as required in the SWPPP’s Pollution Prevention Plan.

9 VAC 25-870-56(A) states in part: “A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary...”

2019 Permit Part II(B)(4)(e)(5) states: “Direct concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters.”

21. During the July 28, 2021 inspection, DEQ staff observed a stormwater conveyance channel, which discharges to a sediment basin, was not stabilized.

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

2019 Permit Part II(B)(2)(c)(8) states: “An approved erosion and sediment control plan, ‘agreement in lieu of a plan,’ or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, implemented to: . . . (8) Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days . . .”

2019 Permit Part II(B)(5)(b)(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site.”

2019 Permit Part II(F)(1-2) states: “SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F. 1. All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures. 2. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.”

22. During the July 30, 2021 inspection, DEQ staff observed sediment basin slope failures which resulted in an unauthorized sediment discharge to surface waters.

Va. Code § 62.1-44.5(A)(3) states in part: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: . . . otherwise alter the physical, chemical, or biological properties of state waters..."

9 VAC 25-870-310(A) states: “Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.”

23. PRO issued a Notice of Violation for the violations noted above as follows: NOV No. 2020-10-PRO-204 & 2010-001577 issued on December 3, 2020.
24. Based on the foregoing information, the Board concludes that HITT violated Va. Code §§ 62.1-44.15:20(A) and 62.1-44.5(A)(3); 9 VAC 25-210-50(A); 9 VAC 25-840-60(A); 9 VAC 25-870-54(B); 9 VAC 25-870-56; 9 VAC 25-870-310(A); 9 VAC 25-880-60; and the associated permit requirements referenced above.
25. HITT has submitted documentation that verifies and DEQ staff inspected the Facility on October 6, 2021, and verified that the violations described in paragraphs C(8) through C(22), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders:

1. HITT pay a total civil charge of **\$56,950** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

HITT shall include its Federal Employer Identification Number (FEIN) with the civil charge payment. HITT shall indicate that the payment is being made in accordance with the requirements of this Order for deposit as follows: **\$32,500** for deposit into the Virginia Environmental Emergency response Fund (VEERF) and **\$24,450** for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, HITT shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of HITT for good cause shown by HITT, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, HITT admit to the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. HITT consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. HITT declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by HITT to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. HITT shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. HITT shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. HITT shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and HITT. Nevertheless, HITT agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after HITT has completed all of the requirements of the Order;
 - b. HITT petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to HITT.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve HITT from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by HITT and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of HITT certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind HITT to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of HITT.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, HITT voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2022.

James Golden, Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

HITT Contracting, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/1/22 By: Josh Shelton (Person), SR Project Manager (Title)
HITT Contracting, Inc.

Commonwealth of Virginia

City/County of Richmond

The foregoing document was signed and acknowledged before me this 1 day of March, 2022 by Josh Shelton who is Senior project manager of HITT Contracting, Inc. on behalf of the corporation.

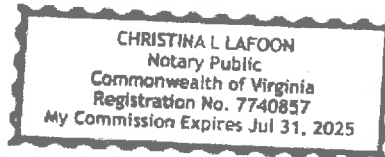
Christina L. Lafoon
Notary Public

7740857

Registration No.

My commission expires: July 31, 2025

Notary seal:



**ENFORCEMENT ITEM SUMMARY FORM
STATE WATER CONTROL BOARD MEETING
ON JUNE 22, 2022**

ITEM: Waste Management of Virginia, Inc. – Charles City County Landfill

DEQ CONTACT: Enforcement Division
Frank Lupini
804-527-5093
Frank.Lupini@deq.virginia.gov

FACILITY ADDRESS: 8000 Chambers Road in Charles City County, Virginia

TYPE OF PERMIT OR PROGRAM: VPDES Construction Stormwater VAR100808, VWP Site No. NP19-000617

STATE WATER AFFECTED: Bradley Run -During the 2020 305(b)/303(d) Integrated Water Quality Assessment, Bradley Run was considered fully supporting with observed effects of the Fish Consumption Use due to a VDH advisory for kepone. The Aquatic Life Use and Wildlife Use were considered fully supporting; the Recreation Use was not assessed.

PROPOSED BOARD ACTION: Consent Special Order w/ Civil Charges

BACKGROUND: Waste Management owns and operates the Charles City County Landfill. Waste Management has placed a deed restriction on the common areas within the Property. On August 1, 2014, Waste Management obtained coverage under the 2014 General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10), and was assigned registration number VAR100808 (Permit). On January 7, 2020, Waste Management was reissued permit coverage under the 2019 Permit and Waste Management's permit coverage was terminated on January 29, 2020.

DISCUSSION: On February 6, 2019, the Department conducted a construction stormwater general permit inspection of the Site and observed violations of the Permit consisting of improper erosion & sediment controls, failure to maintain BMPs, and failure to conduct inspections. Additional Department inspections were conducted on February 22, and March 6, April 29, July 17, and August 21, of 2019 with observed violations of the same or substantially similar nature of the Permit. In addition, Staff observed significant alteration and degradation of existing wetland acreage and function due to a lack of properly installed, and failures to, erosion and sediment controls. Within the Charles City Landfill Site, approximately 0.87 acre of palustrine forested wetland, 4.6 acres of palustrine scrub shrub wetland, and 4,678 linear feet of stream channel, including an unnamed tributary to Bradley Run, have been impacted from the lack of proper erosion and sediment controls with approximately 1-16 inches of sediment observed in varying locations throughout the Site.

On September 4, 2019, the Department issued an NOV to Waste Management for stormwater permit violations and wetland impacts at the Facility observed by Department staff during the inspections conducted from February 6, through August 21, of 2019. The Department met with Waste Management on October 7, 2019 to discuss the NOV and the issuance of a Consent Order.

CIVIL CHARGES/SUPPLEMENTAL ENVIRONMENTAL PROJECT: Section D of the

Order imposes a civil charge of \$95,000. \$4,750 to be deposited in the Virginia Environmental Emergency Response Fund and \$4,750 into the Stormwater Management Fund. Waste Management shall satisfy \$85,500 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP).

PREVIOUS ENFORCEMENT ACTIONS: There are no previous Orders issued to Waste Management at this facility in the last 5 years.

PUBLIC COMMENT: The Consent Order was signed on March 17, 2022, and again on March 29, 2022 before a notary. A public notice for this proposed Consent Order was run in *The Progress-Index*, in the *Virginia Register*, and on the Department's website on March 28, 2022. The 30 day public comment period ended on April 28, 2022. No public comments were received during the comment period.



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 FAX (804) 698-4178
www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4000

James Golden
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WASTE MANAGEMENT OF VIRGINIA, INC.
FOR
THE CHARLES CITY COUNTY LANDFILL
VPDES PERMIT VAR100808
VWP SITE NUMBER NP19-000617**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Waste Management of Virginia, Inc., regarding the Charles City County Landfill, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expired on June 30, 2019.
2. "2019 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was

issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or 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 acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
8. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
9. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
10. "Facility" or "Site" means the Charles City County Landfill located at 8000 Chambers Road in Charles City County, Virginia.
11. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
12. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
13. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.

14. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
15. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
16. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
17. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
18. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
19. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
20. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.
21. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
22. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

23. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
24. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
25. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
26. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
27. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
28. "SWPPP" means stormwater pollution prevention plan.
29. "USACE" means the United States Army Corps of Engineers.
30. "Va. Code" means the Code of Virginia (1950), as amended.
31. "VAC" means the Virginia Administrative Code.
32. "VPDES" means Virginia Pollutant Discharge Elimination System.
33. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.

34. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
35. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
36. "VWP" means Virginia Water Protection.
37. "VWP Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
38. "Waste Management" means Waste Management of Virginia, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Waste Management is a "person" within the meaning of Va. Code § 62.1-44.3
39. "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. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Waste Management owns and operates the Facility in Charles City County, Virginia, from which stormwater associated with construction activity is discharged. Waste Management has placed a deed restriction on the common areas within the Property. Charles City County is the VSMP authority.
2. On August 1, 2014, Waste Management obtained coverage under the 2014 General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10), and was assigned registration number VAR100808. On January 7, 2020, Waste Management was reissued permit coverage under the 2019 Permit.

3. The 2014 Permit and 2019 Permit allowed Waste Management to discharge stormwater associated with construction activities from the Site to Bradley Run, in strict compliance with the terms and conditions in the permits.
4. Bradley Run is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
5. On February 6, 2019, the Department conducted a construction stormwater inspection of the Site and observed the following:
 - a) Qualified Personnel were not identified in the SWPPP.
 - b) A stormwater management plan was not observed in the SWPPP or the site plan.
 - c) Low lying areas did not have adequate perimeter controls installed; sediment was eroding off Site.
 - d) Sediment basin 2 was eroding heavily, silt fencing had not been maintained in multiple areas, diversions had not been maintained.
 - e) Inspection reports were not being conducted at the required frequency, and inspection reports repeatedly identified the same problem without corrective action taking place.

On February 7, 2019 the Department sent the inspection report to Waste Management requesting corrective action by February 14, 2019.

6. 9 VAC 25-870-54(A) states in part: "A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities..."
7. 2014 Permit Part II(A)(6) states: "Stormwater pollution preventions plan contents. The SWPPP shall include the following items... Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit."
8. 2014 Permit Part I(B)(4)(d)(1) states in part: "The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows: (1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day..."
9. 2014 Permit Part II (G)(1), states: "The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained."

10. 9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”
11. 2014 Permit Part II (E) (1) states in part: “All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.”
12. 9 VAC 25-840-40(4) states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.”
13. 9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”
14. On February 22, 2019, and again on March 6, 2019, the Department VWP staff conducted inspections of the Site and observed significant alteration and degradation of existing wetland acreage and function due to a lack of properly installed, and failures to, erosion and sediment controls. Within the Charles City Landfill Site, approximately 0.87 acre of palustrine forested wetland, 4.6 acres of palustrine scrub shrub wetland, and 4,678 linear feet of stream channel, including an unnamed tributary to Bradley Run, have been impacted from the lack of proper erosion and sediment controls with approximately 1-16 inches of sediment observed in varying locations throughout the Site.
15. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50(A) of the VWP Permit Regulations state that except in compliance with a permit no person shall dredge, fill or discharge any pollutant into or adjacent to surface waters, excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: filling or dumping.
16. On April 29, 2019, the Department conducted a construction stormwater inspection of the Site and observed the following:
 - a) Qualified Personnel had not been identified in the SWPPP.
 - b) The SWPPP did not contain any amendments, modifications, or corrective actions that had occurred on site.
 - c) The contactor responsible for the implementation and maintenance of the erosion and sediment controls had not been identified.
 - d) Sediment discharges noted on previous construction stormwater inspection report(s) and VWP inspections had not been recorded in the SWPPP.
 - e) Inspections were not being signed by the operator or a delegated authority; no delegated authority had been identified. Records state that beginning April 5, 2019, there were no erosion and sediment control deficiencies on site that required corrective actions; however, this conflicts with the inspection conducted April 29, 2019.

- f) Large areas had been cleared but had not undergone grading to direct flow to the sediment basins. The areas in question either had concentrated flow directed to silt fence or had no perimeter controls at all. Grading work after clearing to direct flows to the sediment basins was not completed.
- g) Denuded areas had not been stabilized in accordance with 9 VAC 25-840-40(1), (2), (3), and (5).
- h) Denuded areas do not have perimeter controls installed. Diversions and conveyance channels were not constructed per the approved ESC plan.
- i) Sediment basins were not installed in accordance with the approved Erosion and Sediment Control plan.
- j) The sediment basins were not functioning as intended. Sediment deposition downstream of the sediment basin outfall was observed. Silt fencing was being undermined at the low areas on site.

On April 30, 2019, the Department sent the inspection report to Waste Management requesting corrective action by May 13, 2019.

- 17. 2014 Permit Part II(F)(4) states in part: “The inspection report and any actions taken in accordance with Part II must be retained by the operator as part of the SWPPP for at least three years...”
- 18. 2014 Permit Part II(A)(6) states: “Stormwater pollution preventions plan contents. The SWPPP shall include the following items... Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit.”
- 19. 2014 Permit Part II(B)(1) states: “The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.”
- 20. 2014 Permit Part II(B)(3) state: “The SWPPP must clearly identify the contractor(s) that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.”
- 21. 2014 Permit Part II(B)(4)(a) states: “The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items:
 - a. A record of dates when:
 - (1) Major grading activities occur;
 - (2) Construction activities temporarily or permanently cease on a portion of the site; and
 - (3) Stabilization measures are initiated;

- b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and where modified as soon as possible;
- c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;
- d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;
- e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;
- f. Measures taken to prevent the reoccurrence of any prohibited discharge; and
- g. Measures taken to address any evidence identified as a result of an inspection required under Part II F...”

- 22. 2014 Permit Part II(F)(3), states in part: “As part of the inspection, the qualified personnel shall: (1) Record the date and time of the inspection....”
- 23. 2014 Permit Part III(K)(2) states in part: “Reports, etc. All reports required by this general permit, including SWPPPs, and other information requested by the board or the department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person...”
- 24. 9 VAC 25-870-54(G) states in part: “The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. ...”
- 25. 9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”
- 26. 9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”
- 27. 2014 Permit Part II (E) (1) states in part: “All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.”
- 28. 9 VAC 25-840-40(1) states “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

29. 9 VAC 25-840-40(2) states “During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.”
30. 9 VAC 25-840-40(3) states “A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.”
31. 9 VAC 25-840-40(5) states “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”
32. 9 VAC 25-840-40(19) states in part: “Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage...”
 - (a) Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.
33. On May 15, 2019, Waste Management responded to the Department’s April 29, 2019, inspection report, detailing corrective action taken for each of the discovered issues.
34. On July 17, 2019, the Department conducted a construction stormwater inspection of the Site and observed the following:
 - a) Initial erosion and sediment control measures did not appear to be installed/stabilized in accordance with the approved Erosion and Sediment Control plans. Land disturbance was occurring up-slope from sediment basin(s) and diversion(s) had not been completed and stabilized.
 - b) Diversions were under construction prior to stabilization. Sediment Basin 7, previously known as SB-2, had not been installed per the approved Erosion and Sediment Control plans.
 - c) The outfall from SB-6 showed signs of new sediment deposition.
 - d) SB-6 showed signs of eroding slopes along the corner of the embankment between the SB & fore-bay. SB-7 had not yet been completed. Diversions had not yet been completed/stabilized.

On August 2, 2019, the Department sent the inspection report to Waste Management and Charles City County requesting corrective action by August 12, 2019.
35. 9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

36. 2014 Permit Part II (E) (1) states in part: "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications."
37. 9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."
38. 9 VAC 25-840-40(4) states: "Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place."
39. 9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."
40. 9 VAC 25-840-40(6) states in part: "Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin..."
41. On August 16, 2019, Waste Management responded to the Department's July 17, 2019, inspection report, listing corrective action for the deficiencies discovered.
42. On August 21, 2019, the Department conducted a construction general permit inspection of the Site and observed the following:
 - a) SB-6 and associated sediment forebay had areas along the embankment that lacked stabilization and the diversion to SB-6 were not stabilized.
 - b) SB-6 had areas of erosion along the embankments, SB-7 had not been constructed, and diversions on site were not stabilized.
43. 9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."
44. 9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."
45. Permit Part II(A)(2)(c)(8) states: "A properly implemented erosion and sediment control plan... ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have been permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days..."
46. 9 VAC 25-840-40(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site."

Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

47. On September 4, 2019, the Department issued NOV Nos. 1903-00976 & 2019-07-PRO-201 to Waste Management for wetland impacts and 2014 Permit violations that were observed by Department staff during the February 6, 2019, February 22, 2019, March 6, 2019, April 29, 2019, inspections of the Site.
48. On October 7, 2019, the Department met with Waste Management to discuss the NOV and the issuance of this Order.
49. Based on the results of the Site inspections, review of the 2014 Permit file, the letters sent by Waste Management, and the October 7, 2019 meeting, the Board concludes that Waste Management has violated Va. Code § 62.1-44.15:20, 9 VAC 25-210-50(A), 9 VAC 25-870-54(A), 2014 Permit Parts I(B)(4)(d)(1), II(A)(2)(c)(8), II (G)(1), II(F)(1) II(F)(3), II(F)(4), II(A)(6), II(A)(7), III(K)(2), II(B)(3), II(B)(1), II(B)(4)(a), 9 VAC 25-870-54(G), 9 VAC 25-840-40(4), 9 VAC 25-840-40(5), 9 VAC 25-840-60(A), 9 VAC 25-840-40(19), 9 VAC 25-840-40(6), 9 VAC 25-870-54(B), 9 VAC 25-840-40(1), and 9 VAC 25-840-40(3) as described above.
50. On February 27, 2020, DEQ staff inspected the Landfill and observed that Waste Management had address all of the environmental issues at the Facility.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Waste Management and Waste Management agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$95,000 in settlement of the violations cited in this Order, to be paid as follows:
 - a. Waste Management shall pay \$9,500 of the civil charge within 30 days of the effective date of this Order Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Waste Management shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit of \$4,750 into the Virginia Environmental Emergency Response Fund (VEERF) and \$4,75 into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Waste Management shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. Waste Management shall satisfy \$85,500 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
- c. The net project costs of the SEP to Waste Management shall not be less than the amount set forth in Paragraph D.2.b. If it is, Waste Management shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order Waste Management certifies that it has not commenced performance of the SEP.
- e. Waste Management acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Waste Management to a third party, shall not relieve Waste Management of its responsibility to complete the SEP as described in this Order.
- f. If the SEP involves performing an environmental assessment or environmental audit, Waste Management shall submit any resulting report, shall report any violations discovered as a result of the environmental assessment or environmental audit to DEQ immediately and shall correct those violations, including any required remedial actions.
- g. In the event it publicizes the SEP or the SEP results, Waste Management shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- h. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the Facility; and

- ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- i. Should the Department determine that Waste Management has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Waste Management in writing. Within 30 days of being notified, Waste Management shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Waste Management for good cause shown by Waste Management, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Waste Management admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Waste Management consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Waste Management declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Waste Management to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Waste Management shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Waste Management shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Waste Management shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Waste Management. Nevertheless, Waste Management agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Waste Management has completed all of the requirements of the Order;
 - b. Waste Management petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Waste Management.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Waste Management from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Waste Management and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Waste Management certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Waste Management to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Waste Management
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Waste Management voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2022.

James J. Golden
Department of Environmental Quality
Piedmont Regional Director

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Waste Management voluntarily agrees to the issuance of this Order.

Date: 3/29/2022 By: [Signature]
Harold S. Thacker, Director of Disposal Operations

Commonwealth of Virginia

City/County of Gloucester

The foregoing document was signed and acknowledged before me this 29th day of

March, 2022, by Harold S. Thacker who is Director of Disposal Operations of Waste Management of Virginia, Inc., on behalf of the corporation.

[Signature: Tracy House Otto]
Notary Public

7922803
Registration No.

My commission expires: August 31, 2025

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

Waste Management shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by Waste Management is to provide funding directly to the VCU Rice Rivers Center (RRC), a regional leader in the science and practice of wetland ecology, that will be used for the following tasks:
 - a. Delineate and characterize tidal wetlands owned by the Chickahominy Tribe using geospatial technologies for critical attributes such as elevation, plant community composition and productivity, and critical habitats for culturally significant living resources including Atlantic Sturgeons and Bald Eagles;
 - b. Design and deploy installations (3 surface Surface Elevation Tables (SETs) installations, vertical ground control points, permanent vegetation plots) on Tribal property to support long-term monitoring of marsh elevation and vegetation change, water quality, invasive species, and use those data to develop threat mitigation and management tactics to support tidal wetland protection;
 - c. Work with Tribal leadership to develop and implement STEM and technical training opportunities for tribal citizens so that long-term monitoring and mitigation efforts will be sustainable and under tribal control.
2. The SEP funding shall be provided to RRC within 30 days from DEQ's execution and delivery of the Order. The SEP shall be completed by **August 1, 2024**.
3. Waste Management shall submit progress reports on the SEP on a quarterly basis, due the 10th day day following the end of each calendar quarter.
4. Waste Management shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Waste Management shall submit the final report and certification to the Department within 30 days from the completion of the SEP.
5. If the SEP has not or cannot be completed as described in the Order, Waste Management shall notify DEQ in writing no later 15 days from discovery. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.

6. Waste Management hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. Waste Management shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Waste Management Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
8. Unless otherwise specified in this Order, Waste Management shall submit all requirements of Appendix A of this Order to:

**Frank Lupini,
VA DEQ Piedmont Regional Office,
4949A Cox Road, Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov**



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Karen Doran, Clean Water Financing & Assistance Program

DATE: May 24, 2022

SUBJECT: Approval of Revised Stormwater Local Assistance Fund Program Guidelines

Purpose

The Department of Environmental Quality's (DEQ's) Clean Water Financing and Assistance Program (CWFAP), on behalf of the State Water Control Board (SWCB), has operated the Stormwater Local Assistance Fund (SLAF) Program since 2013 to reduce non-point source pollution from stormwater runoff. The purpose of the SLAF is to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads. The SLAF was established in the Commonwealth's 2013-2014 Budget, and has been continued in the Commonwealth's subsequent budgets. Currently budget language that authorizes the continuation of the SLAF is included in Item 379 in Chapter 552 of the 2021 Special Session I Acts of Assembly. In 2016 legislation codified the SLAF at § 62.1-44.15:29.1 of the Code of Virginia with a contingent effective date of July 1, 2017, or 30 days after the adoption of the regulations required to implement that legislation. Those regulations have not yet been adopted, therefore the legal basis for the SLAF continues to be the language in the current budget.

During the 2021 Special Session I, the Virginia General Assembly amended § 62.1-44.15:29.1 of the Code of Virginia to permit the consideration of total nitrogen reductions for grants awarded to projects related to Chesapeake Bay total maximum daily load (TMDL) requirements and to allow grants awarded for eligible projects in localities with high or above average fiscal stress, as reported by the Commission on Local Government, to account for more than 50 percent of the costs of a project. As explained above, this section of the Code of Virginia is not yet effective. However, DEQ staff have proactively drafted revised the SLAF Program Guidelines to implement these changes because these

changes are also permissible under the budget language that currently authorizes the SLAF. In addition, these revised SLAF Program Guidelines make improvements to the program, including: allowing for electronic reimbursement submittals, incorporating current stream restoration guidance, revising criteria to reward public engagement and give credit for each step in the project planning phase, and revising the Best Management Practices (BMP) table to incorporate efficiencies by reference.

Background

The SLAF was established in 2013 to provide matching grants to local governments to help meet: i) obligations related to the Chesapeake Bay total maximum daily load (TMDL) requirements; ii) requirements for local impaired stream TMDLs; iii) water quality requirements of the Chesapeake Bay Watershed Implementation Plan (WIP); and iv) water quality requirements related to the permitting of small municipal stormwater sewer systems. On behalf of the SWCB, DEQ developed and continues to administer the SLAF. The SLAF Program awards grants for the acquisition of certified nonpoint nutrient credits and capital projects, including but not limited to: i) new stormwater best management practices (BMPs); ii) stormwater BMP retrofits; iii) stream restoration; iv) low impact development projects; v) buffer restoration; vi) pond retrofits; and vii) wetlands restoration.

CWFAP staff evaluated, developed, and revised the SLAF Program Guidelines in consultation with several key stakeholders that provide an integral role in the implementation of the SLAF Program. These stakeholders included the Virginia Municipal Stormwater Association, the Chesapeake Bay Foundation, the James River Association, the Hampton Roads Planning District Commission, the Northern Virginia Regional Commission, and representatives from local governments that have received SLAF grants in the past. Meetings with stakeholders were conducted on February 2, February 9, February 15, March 16, March 18, and March 29, 2022. During these meetings, the proposed changes to the Guidelines were discussed, stakeholder comments were solicited with subsequent staff responses developed with internal consultation, and successive revisions to the Guidelines were disseminated and further reviewed. DEQ has incorporated stakeholder input and made final revisions to the Guidelines.

On April 18, 2022, the revised Guidelines were presented to the public for a 30-day public comment period ending May 18, 2022. Five sets of comments were received during the comment period, resulting in one change to the guidelines document. All comments received and the subsequent staff response have been summarized in the attached document. The Guidelines are now finalized and are being presented to the SWCB at its June 22, 2022 meeting for approval.

Summary of Guidelines Revisions

In order to be consistent with § 62.1-44.15:29.1 of the Code of Virginia once it is effective, the Guidelines now allow for the award of grants for eligible projects in localities with high or above average fiscal stress to account for more than 50 percent of the costs of a project, and Total Nitrogen reductions were incorporated into the scoring criteria. In addition to these changes, DEQ made the following revisions to the Guidelines:

- (1) Grantees are now authorized to submit reimbursement requests electronically,
- (2) Program requirements were updated and the pollution reduction calculation methodology was revised to reflect the most current consolidated recommendations for stream restoration projects in the September 2021 Unified Stream Restoration Guide,
- (3) The Readiness to Proceed section of the Priority Ranking Criteria was revised to reward public engagement and give credit for each step in the project planning phase.
- (4) The Best Management Practice (BMP) Table was revised to incorporate nutrient removal efficiencies for Proprietary BMP's by reference to allow for future changes without further revisions to the Guidelines.

Conclusion

In order to further improve program implementation, DEQ staff revised the SLAF Program Guidelines with stakeholder input and provided the Guidelines for public review and comment. Following completion of the public participation period, comments have been addressed and the SLAF Program Guidelines are finalized and are now being provided to the SWCB for approval.

STORMWATER LOCAL ASSISTANCE FUND PROGRAM GUIDELINES

STORMWATER LOCAL ASSISTANCE FUND - ENABLING LEGISLATION

In order to reduce non-point source pollution from stormwater runoff, the Virginia General Assembly included Item 360 in Chapter 860 of the 2013 Acts of Assembly (the Commonwealth's 2013-2014 Budget) which created and set forth specific parameters for the administration of the Stormwater Local Assistance Fund (SLAF). With the consolidation of water quality programs with the State Water Control Board (SWCB) through HB 2048 (2013) and SB 1279 (2013) (2013 Va. Acts Chs. 756 and 793), administration of the SLAF resides with the SWCB and the Department of Environmental Quality (DEQ). The SLAF has been continued in the Commonwealth's subsequent budgets; currently budget language that authorizes the continuation of the SLAF is included in Item 379 in Chapter 552 of the 2021 Special Session I Acts of Assembly.¹

The following is the text of Item 379:

C.1. The State Comptroller is authorized to continue the Stormwater Local Assistance Fund as established in Item 360, Chapter 806, 2013 Acts of Assembly. The fund shall consist of bond proceeds from bonds authorized by the General Assembly and issued pursuant to Item C-39.40 in Chapter 806, 2013 Acts of Assembly, Item C-43 of Chapter 665, 2015 Acts of Assembly, Chapter 759, 2016 Acts of Assembly, Item C-48.10 in Chapter 854, 2019 Acts of Assembly, and Item C-70 of this Act; sums appropriated to it by the General Assembly; and other grants, gifts, and moneys as may be made available to it from any other source, public or private. Interest earned on the moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

2. The purpose of the Fund is to provide matching grants to local governments for the planning, design, and implementation of stormwater best management practices that address cost efficiency and commitments related to reducing water quality pollutant loads. Moneys in the Fund shall be used to meet: i) obligations related to the Chesapeake Bay total maximum daily load (TMDL) requirements; ii) requirements for local impaired stream TMDLs; iii) water quality requirements of the Chesapeake Bay Watershed Implementation Plan (WIP); and iv) water quality requirements related to the permitting of small municipal stormwater sewer systems. The grants shall be used only for the acquisition of certified nonpoint nutrient credits and capital projects meeting all pre-requirements for implementation, including but not limited to: i) new stormwater best management practices; ii) stormwater best management practice retrofits; iii) stream restoration; iv) low impact development projects; v) buffer restoration; vi) pond retrofits; and vii) wetlands restoration.

3. Out of amounts in this item, \$25,000,000 the second year from the general fund is provided for deposit in the Stormwater Local Assistance Fund.

DEQ's Clean Water Financing and Assistance Program, on behalf of the SWCB, has developed these guidelines and will administer the SLAF. These Guidelines and the grant agreements awarding funds from the SLAF are supplemental to the State Water Control Law, Chapter 3.1, Title 62.1 of the Code of Virginia (1950), as amended, and do not limit in any way the other water quality restoration, protection and enhancement, or enforcement authority of the State Water Control Board, the Department of Environmental Quality (DEQ), or the Director of DEQ.

¹ 2016 Va. Acts Chs. 68 and 758 codified the SLAF at Va. Code § 62.1-44.15:29.1 with a contingent effective date of July 1, 2017, or 30 days after the adoption by the SWCB of the regulations required to implement those acts. As of January 1, 2022 those regulations have not yet been adopted.

GRANT APPLICATION / AWARD PROCESS

Applications for SLAF grants will be solicited once each year that a state appropriation is available. Absent extraordinary circumstances, the solicitation will be announced no later than August 1, the application deadline will be on October 1, and award decisions will be announced no later than February 1. This schedule is subject to change due to extraordinary circumstances. In the event one of these milestones occurs on a day that is not a regular business day for state offices the deadline will move to the next following regular business day. The completed application form and all necessary support documentation should be mailed to:

**Clean Water Financing and Assistance Program
Department of Environmental Quality
1111 East Main Street, Suite 1400
P.O. Box 1105
Richmond, Virginia 23219**

Applications will be reviewed and ranked in accordance with the priority ranking criteria provided in these guidelines. Based on that ranking process and with consideration to providing the greatest financial and environmental benefit to as many communities as practicable, the DEQ Director will authorize a project funding list. The authorized funding list (including recipient name, grant amount, and priority point totals) will be posted on the DEQ website. DEQ will then issue Letters of Authorization to all recipients on the authorized project funding list so that they may proceed with their projects. The full commitment of funding with an executed Grant Agreement is conditioned upon the recipient meeting the program requirements as outlined in these guidelines, including the satisfactory technical review of the project design and procurement of design and construction services in accordance with the Virginia Public Procurement Act. DEQ staff will work with the authorized grant recipients as they complete the program requirements and advertise for construction bids.

Upon approval of all program requirements, the receipt of construction bids, and the development and approval of a final project budget based on as-bid or contractual costs, a grant will be awarded. In the case where a grantee has multiple projects, DEQ will execute one grant agreement per project. For each solicitation period, the DEQ Director may establish a date by which program requirements must be met and a grant agreement must be executed or authorized funds will expire.

ELIGIBLE APPLICANTS

Local governments, meaning any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth, are eligible to apply for cost-share from the SLAF.

ELIGIBLE PROJECTS

Capital projects for reducing and treating stormwater runoff as identified in Attachment A. Urban Stream Restoration projects must receive an Army Corps of Engineers Nationwide 27 or Individual Permit to be eligible for funding.

The SLAF is authorized in Item 379 in Chapter 552 of the 2021 Special Session I Acts of Assembly to fund the purchase of non-point source nutrient credits. The purchase of non-point source nutrient credits will be eligible

only in funding cycles where the appropriation language allows its eligibility. Only permanent non-point source nutrient credits that have been certified by DEQ will be considered eligible for SLAF funding. Funding for the purchase of certified non-point source nutrient credits will be limited to no more than 25% of available funds in a given funding cycle.

The DEQ Director reserves the right to set a maximum allowed cost per pound of total phosphorous (TP) or total nitrogen (TN) removed (or purchased) based on the pool of applications received during any given funding cycle.

GRANT PERCENTAGE

The DEQ Director will authorize grants of up to 50% of the eligible costs of planning, design, and installation of stormwater best management practices. The recipient must be able to demonstrate the availability of the 50% local match. The Virginia Clean Water Revolving Loan Fund can be used as a source for the local match under the guidelines issued for that program. Grants awarded for eligible projects in localities with high or above average fiscal stress² may account for more than 50% of the costs of the project.

ALLOWABLE GRANT AMOUNT

The minimum grant amount per local government is \$50,000 and the maximum grant amount per local government is \$5,000,000.

The minimum and maximum grant amounts may be adjusted at the discretion of the DEQ Director.

GRANT ELIGIBLE EXPENSES

The SLAF program allows for any reasonable and necessary costs associated with the water quality elements of the stormwater management project, including all associated planning, design, permitting, inspection, and construction costs. The purchase of non-point source nutrient credits will be eligible only in funding cycles where the appropriation language allows its eligibility. Grant proposals must be supported by a need which addresses an existing stormwater pollution problem or prevents a future environmental problem due to stormwater runoff. Grant requests received which are solely supported by the economic development needs of an area or an entity may be excluded from funding participation. DEQ may reduce grant eligibility and/or the scope and size of a project to ensure the greatest financial and environmental benefit to as many communities as possible. DEQ may set a date before which construction may not have started in order for the project to be considered eligible for funding. Planning and design expenses incurred on an approved project prior to the execution of a grant agreement are eligible costs provided they are necessary and directly attributable to the project and any services or contracts are secured in accordance with State procurement requirements. Professional services (planning, design, and construction oversight) expenses are limited to 35% of construction costs. If the total cost of professional services expenses exceed 35% of the construction costs, the project will still be eligible for funding but DEQ will limit its cost share participation in these services to no more than 35% of the construction cost.

INELIGIBLE GRANT COSTS

The following expenses cannot be included when determining the allowable amount of a SLAF grant:

1. Salaries and other expenses of municipal employees are not allowable expenses for reimbursement under

² Fiscal stress data are taken from the Commission on Local Government's most recent *Report on Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Cities and Counties*, found at <https://www.dhcd.virginia.gov/fiscal-stress>
Stormwater Local Assistance Fund Guidelines

the program. In addition, the cost of Force Account Labor is ineligible.

2. Administrative costs such as supplies, rent, grant administration, and/or travel.
3. Changes in the approved project scope without DEQ concurrence.
4. Change orders not attributable to the stormwater project or involving duplication of effort or work.
5. Any cost or expenditure that is determined to be unnecessary, unreasonable, or unrelated to the water quality function of the project.
6. Costs to operate or maintain the project.
7. Any interest costs associated with funds borrowed for the planning, design, or construction of the project.
8. Costs associated with post-construction monitoring of the project.

REIMBURSEMENT

Disbursement of grant funds will be made on a periodic reimbursement basis. Invoices must be submitted which fully substantiate all requests for disbursement of grant funds. All reimbursement requests must be reviewed and approved by DEQ staff prior to actual disbursement of funds. A grantee is authorized to submit reimbursement requests electronically, unless DEQ directs that the grantee submit by U.S. Mail or hand-delivery. In such cases, an original signed reimbursement request must be submitted to DEQ's Clean Water Financing and Assistance Program and one copy submitted to the appropriate DEQ regional office.

PROGRAM REQUIREMENTS

The following requirements are applicable to all projects funded through the Stormwater Local Assistance Fund:

1. Procurement of all funded goods/services must be made in conformance with the requirements of the Virginia Public Procurement Act, regardless of population size. DEQ will allow certification of engineering and/or construction procurement in order to streamline submittals.
2. When SLAF is participating in land acquisition costs, the grantee must submit copies of the basic administrative reports and/or appraisals to substantiate the value of the land being purchased.
3. Stormwater best management practices (BMPs) listed on the Virginia Stormwater BMP Clearinghouse website shall be designed and constructed in accordance with all applicable standards and specifications provided by the Virginia Stormwater BMP Clearinghouse. Stormwater management facilities accepted for use by the U.S. Environmental Protection Agency's Chesapeake Bay Program shall be designed and constructed in accordance with all applicable standards and specifications provided by the Chesapeake Bay Program. If the BMP is a retrofit that cannot fully meet the applicable design specifications, then it must meet them to the degree feasible, given space constraints and other limitations. However, cost should not be a limiting factor.
4. Stream Restoration Projects shall meet the applicable qualifying conditions and be designed and credited for pollutant reduction in accordance with the *September 2021 Unified Stream Restoration Guide*³.
5. A plan shall be submitted outlining the provisions for the long-term responsibility, maintenance, and verification, of all projects funded through the SLAF. These provisions shall include, at a minimum, a

³ The September 2021 Unified Stream Restoration Guide is a consolidation of official Chesapeake Bay Program recommendations for crediting stream restoration practices developed by the Chesapeake Stormwater Network and can be found at https://chesapeakestormwater.net/wp-content/uploads/dlm_uploads/2021/10/Unified-Stream-Restoration-Guide_FINAL_9.17.21.pdf

description of the requirements for maintenance of the practice, a schedule of inspection and maintenance, and the identification of a person or persons who will be responsible for maintenance. Long-term responsibility and maintenance requirements for funded projects located on private property shall be set forth in an instrument recorded in the local land records and shall be consistent with 9VAC25-870-112 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

6. Post-construction documentation shall be submitted to include a Certification of Completion and As-Built Record Drawing.
7. For the purchase of certified non-point source nutrient credits, DEQ will require a purchase contract.

PRIORITY RANKING CRITERIA

DEQ will prioritize applications for grant assistance on a statewide basis. Stormwater projects or non-point source nutrient credit purchases which are the most cost effective and are expected to provide the greatest water quality benefit will be given the highest funding priority.

HIGHEST TOTAL POSSIBLE SCORE = 600 PTS

I. POLLUTANT REDUCTION (MAXIMUM 100 points)

Points will be based on the calculated reduction of total phosphorous (TP) and total nitrogen (TN) as a result of the proposed project. TP serves as the representative pollutant of concern for stormwater management compliance in the Commonwealth; however, some stormwater practices have been shown to be more effective at reducing TN. DEQ will convert calculated or purchased TN reductions to TP reductions using methodologies derived from the Commonwealth of Virginia Chesapeake Bay TMDL Phase III Watershed Implementation Plan⁴. DEQ will then assign points based on the sum total of the reductions. The established methodology for calculating the TP and TN reduction for stormwater management projects is outlined in Attachment A.

II. COST EFFECTIVENESS (MAXIMUM 200 points)

Points will be based on the projected cost of the project divided by the combined pollutant reduction as calculated in Section I.

III. IMPAIRED WATER BODIES (MAXIMUM 100 points)

Points will be based on the location and impact of the proposed project in relation to priority water bodies in the state. **Note: These categories (a – b) are additive.**

- | | |
|--|---------|
| a. Project is directly related to the requirements of the Chesapeake Bay TMDL | 60 pts. |
| b. Project is directly related to requirements of a local impaired stream TMDL | 40 pts. |
| or | |
| Project is directly related to a local impaired stream without a TMDL | 20 pts. |

⁴ The Commonwealth of Virginia Chesapeake Bay TMDL Phase III Watershed Implementation Plan is a planning document for attaining nutrient and sediment reductions needed to restore the Chesapeake Bay and its tidal tributaries and is located at <https://www.deq.virginia.gov/home/showpublisheddocument/4481/637469262077670000>

IV. FISCAL STRESS-(COLG Composite Stress Index) and Local Funding (MAXIMUM 75 points)

Fifty of the points for county and city applicants will be based on the latest available Commission on Local Government composite fiscal stress index. Town applicants will be assigned the points of the surrounding county. Any applicant with a project serving more than one jurisdiction (such as public service authorities or towns located in two counties) will be assigned a weighted average from the component scores. Twenty-five points will be awarded to any applicant that has established a dedicated local funding/revenue mechanism for stormwater capital projects.

V. READINESS TO PROCEED (MAXIMUM 100 points)

Because it is important that grant recipients proceed quickly with their proposed projects, applicants that can proceed immediately with their proposed projects, or demonstrate an advanced state of readiness, will be given points for each planning activity conducted under this category. **Note: These categories are additive.**

Stormwater Quality Projects:

Final design plans approved by the locality	10 pts.
Design plans submitted and under review by the locality	10 pts.
Preliminary / Concept engineering completed	10 pts.
Executed engineering contract with approved task order issued or in-house engineering approved by applicant for this project	20 pts.
Project included in <u>most recent</u> Capital Improvement Plan, TMDL Action Plan, or has otherwise been posted for public notice.	25 pts.
All funding is in place for the local match and, if necessary, land and easements for the project have already been acquired, or land and easement acquisitions are not required.	25 pts.

Non-Point Source Nutrient Credit Purchases:

Applicant has signed a contract with a bank to purchase a number of non-point source nutrient credits for a specific cost and are immediately available.	50 pts.
Applicant has signed a contract with a bank to purchase a number of non-point source nutrient credits for a specific cost and are available within 6 months.	10 pts.
Written contract with a bank has been drafted for the purchase of non-point source nutrient credits.	10 pts.
Applicant has obtained written proposal(s) for the purchase of non-point source nutrient credits.	5 pts.
All funding is in place for the local match.	25 pts.

VI. PHASE II (SMALL) MS4 (MAXIMUM 25 points)

Applicants that are regulated under the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems will receive 25 points.

Attachment A

METHODOLOGY FOR CALCULATING TOTAL PHOSPHORUS AND TOTAL NITROGEN REDUCTION

For the purpose of determining pollution reduction rankings, applicants shall submit expected reductions of total phosphorus (TP) and total nitrogen (TN) calculated as follows:

- 1) For Virginia BMP Clearinghouse BMPs, U.S. Environmental Protection Agency Chesapeake Bay Program BMPs, and BMP retrofits:
 - a) **Initial TP and TN loads** (in pounds) shall be calculated on the Site Data tab of the Virginia Runoff Reduction Method (VRRM) Spreadsheet (Version 3.0, April 2016; 2011 or 2013 BMP Stds & Specs). Instructions for using the Spreadsheet can be found in Guidance Memo No. 16-2001 *Virginia Runoff Reduction Method Compliance Spreadsheet User's Guide & Documentation* (April 2016).
 - b) **TP and TN load reductions** (in pounds) shall be determined using the following methods, as specified:
 - i) If the proposed BMP is on the Attachment A list, then the TP and TN load reductions shall be calculated using the TP and TN removal efficiencies assigned to the selected BMP in the table.
 - ii) If the BMP being installed, enhanced, or converted cannot fully meet the design specifications for an Attachment A BMP, then the TP and TN load reductions shall be determined using the applicable Runoff Reduction (RR) or Stormwater Treatment (ST) retrofit equations or performance curves developed in the *Recommendations of the Expert Panel to Define Removal Rates for Urban Stormwater Retrofit Projects* (October 2012), on the Chesapeake Bay Program website at: http://chesapeakebay.net/documents/Final-CBP-Approved-Expert-Panel-Report-on-Stormwater-Retrofits-long_012015.pdf
- 2) **Existing BMPs:** If an applicant proposes a conversion or enhancement of an existing pond or BMP that was in place on or before June 30, 2009 (the baseline date for the Chesapeake Bay TMDL load allocations), only the incremental increase in pollutant reduction estimated consistent with the *Recommendations of the Expert Panel to Define Removal Rates for Urban Stormwater Retrofit Projects* (2012) will be eligible for scoring for this grant process. Proposals to increase the treatment capacity of a BMP that was lost due to lack of routine maintenance being performed will not be eligible for grant funds.
- 3) **Land Use Change:** If the project constitutes a land use change (e.g., planting trees where impervious surface once existed, etc.), the initial TP and TN loads shall be calculated as directed in paragraph 1a above. The proposed TP and TN loads shall be calculated using the Site Data tab of the VRRM Spreadsheet reflecting the land use change. The reduction is the difference between the initial and proposed TP and TN loads.
- 4) **Urban Stream Restoration Required Information:**
 - a) A written description of the site selection and assessment process for the project including documentation of pre-construction assessment including photographs of the reach of stream to be restored, Rosgen stream channel classification, watershed study including notable BMPs within the watershed, and conceptual design plans. .
 - b) Site-level data collected consistent with the *September 2021 Unified Stream Restoration Guide* including:
 - i) Estimated stream sediment erosion rate based on BANCS Method field surveys. In order to provide more consistency in BANCS assessments, practitioners are recommended to use the *TMDL Credit Reduction Workbook using BANCS and Protocol 1* spreadsheet provided in Appendix A of the *2020 Protocol 1 Expert Panel Report*.
 - ii) Stream bank soil bulk density; and
 - iii) Stream bank soil TN and TP concentrations.

Site level values for bulk density and nutrient concentrations are to be inserted into the spreadsheet for calculating application estimated load reductions. Likewise, application estimated load reductions shall be based on a restoration effectiveness of 50%.

Virginia Stormwater BMP Clearinghouse Non-Proprietary BMPs

BMP Clearinghouse Specification #	Practice	Total Phosphorus Mass Load Removal (TR, as %)
2	Sheetflow to Conservation Area	50 to 75 ¹
	Sheetflow to Vegetated Filter Strip	50
3	Grass Channel	24 to 41 ¹
5	Vegetated Roof Level 1	45
	Vegetated Roof Level 2	60
7	Permeable Pavement Level 1	59
	Permeable Pavement Level 2	81
8	Infiltration Level 1	63
	Infiltration Level 2	93
9	Bioretention Level 1	55
	Bioretention Level 2	90
	Urban Bioretention	55
10	Dry Swale Level 1	52
	Dry Swale Level 2	76
11	Wet Swale Level 1	20
	Wet Swale Level 2	40
12	Filtering Practice Level 1	60
	Filtering Practice Level 2	65
13	Constructed Wetland Level 1	50
	Constructed Wetland Level 2	75
14	Wet Pond Level 1	50 (45 for coastal plain) ²
	Wet Pond Level 2	75 (65 for coastal plain) ²
15	Extended Detention Pond Level 1	15
	Extended Detention Pond Level 2	31

Virginia Stormwater BMP Clearinghouse Proprietary Devices

BMP Clearinghouse Specification #	Device Name	Total Phosphorus Mass Load Removal (TR, as %)
16	Hydrodynamic Manufactured Devices	Please Find Percentages Here: https://swbmp.vwrrc.vt.edu/bmps/hydrodynamic-devices/
17	Filtering Manufactured Devices	Please Find Percentages Here: https://swbmp.vwrrc.vt.edu/bmps/filtering-devices/

Chesapeake Bay Program BMPs, Established Efficiencies

Practice	Total Phosphorus Mass Load Removal (TR, as %)
Wet Ponds and Wetlands	45
Dry Detention Ponds and Hydrodynamic Structures	10
Dry Extended Detention Ponds	20
Infiltration Practices w/o Sand, Veg.	85
Infiltration Practices w/ Sand, Veg.	85
Filtering Practices	60
Bioretention C/D soils, underdrain	45
Bioretention A/B soils, underdrain	75
Bioretention, A/B soils, no underdrain	85
Vegetated Open Channels, C/D soils, no underdrain	10
Vegetated Open Channels, A/B soils, no underdrain	45
Bioswale	75
Permeable Pavement w/o Sand, Veg. C/D soils, underdrain	20
Permeable Pavement w/o Sand, Veg. A/B soils, underdrain	50
Permeable Pavement w/o Sand, Veg. A/B soils, no underdrain	80

Permeable Pavement w/ Sand, Veg. C/D soils, underdrain		20
Permeable Pavement w/ Sand, Veg. A/B soils, underdrain		50
Permeable Pavement w/ Sand, Veg. A/B soils, no underdrain		80
Chesapeake Bay Program BMPs Hydrogeomorphic Region Impacted Efficiencies		
Practice	Hydrogeomorphic Region(s)	Total Phosphorus Mass Load Removal (TR, as %)
Wetland Restoration	Appalachian Plateau Siliciclastic	12
Wetland Restoration	Coastal Plain Dissected Uplands; Coastal Plain Uplands; Coastal Plain Lowlands	50
Wetland Restoration	Blue Ridge; Mesozoic Lowlands; Piedmont Crystalline; Piedmont Carbonate; Valley and Ridge Siliciclastic; Valley and Ridge Carbonate	26
Other Practices		
Practice	Expert Panel Report for Determining Total Phosphorus Removal	
BMP Retrofits	<u>Recommendations of the Expert Panel to Define Removal Rates for Urban Stormwater Retrofit Projects (January 2015)</u>	
Urban Stream Restoration	<u>Protocol 1: Consensus Recommendations for Improving the Application of the Prevented Sediment Protocol for Urban Stream Restoration Projects Built for Pollutant Removal Credit (February 2020)</u>	
	<u>Protocol 2 & 3: Consensus Recommendations to Improve Protocols 2 and 3 for Defining Stream Restoration Pollutant Removal Credits (October 2020)</u>	
Dry Channel Regenerative Stormwater Conveyance	<u>Protocol 4: Recommendations of the Expert Panel to Define Removal Rates for Individual Stream Restoration Projects (September 2014)</u>	
Living Shoreline	<u>Recommendations of the Expert Panel to Define Removal Rates for Shoreline Management Projects (November 2019)</u>	
Outfall and Gully Stabilization	<u>Protocol 5: Recommendations for Crediting Outfall and Gully Stabilization Projects in the Chesapeake Bay Watershed (October 2019)</u>	
Notes:		
¹ See design specifications for more information.		
² Lower nutrient removal in parentheses applies to wet ponds in coastal plain terrain		

Summary of Public Comments and Staff Responses

Draft Stormwater Local Assistance Fund (SLAF) Program Guidelines

The Virginia Department of Environmental Quality (DEQ) sought public comments from April 18 – May 18, 2022 on revisions to the Stormwater Local Assistance Fund (SLAF) Program Guidelines.

A total of five written communications were received during the public comment period. All commenters provided positive feedback on the stakeholder engagement process. Several comments received support a continuing dialogue surrounding the co-benefits of project implementation and the need to address rapidly rising construction costs in the consideration of grant awards. One communication identified a revised document date referenced in the Guidelines. DEQ concurs with the corrected date and has updated Page 9 of the Guidelines.

Comments were also received on the following topics:

- 1. Suggestion to remove requirement to submit Responsibilities and Maintenance Plan, Certificate of Substantial Completion, and As-Built Record Drawings for all localities with MS4 Permits.*
 - DEQ response – The completion of these requirements for all projects funded through SLAF is reasonable in order to ensure that the projects are built as planned and provisions for their long term maintenance are in place, thus no change to the guidelines is warranted.
- 2. A request that DEQ allow “grandfathering” from Site Level data collection for Stream Restoration projects that were still in the design phase as of July 1, 2021.*
 - DEQ response – The collection of site specific data for stream restoration projects represents the most objective means to evaluate project efficacy and is a reimbursable expense, thus no further changes to the guidelines are warranted.
- 3. Requests to provide a rationale for project efficiency cutoffs and grant award size.*
 - DEQ response – The Director retains the authority to set efficiency cutoffs and grant maximums and minimums based on the pool of applications received during any given funding cycle, this comment will be considered during the next funding cycle. No change to the guidelines is warranted.
- 4. Request to add a scoring component related to climate resiliency.*
 - DEQ response – There is currently not an objective means to evaluate climate resiliency as it pertains to stormwater BMP design, thus no change to the guidelines is warranted.
- 5. Request to consider a post-award contingency allocation to all applicants.*
 - DEQ response – Contingency line items are permitted in project budgets and allowing for an additional amount provides an unacceptable level of uncertainty in the fund for planning purposes, thus no change to the guidelines was made.
- 6. Request to clarify that points awarded in the FISCAL STRESS-(COLG Composite Stress Index) and Local Funding section apply to all applicants.*
 - DEQ response – Points in this section are awarded to all applicants, no change to the guidelines was made.
- 7. Request to change verbiage in the Readiness to Proceed Section for the initiation of engineering.*
 - DEQ response – The verbiage in the draft guidelines is appropriate for the planning milestone, no change to the guidelines was made.

Public Comments and Staff Responses

Draft Stormwater Local Assistance Fund (SLAF) Program Guidelines

On April 18, 2022 the Draft SLAF Program Guidelines were released for a 30-day public comment period, which ended on May 18, 2022. During the public comment period comments were received from the following respondents:

- Normand Goulet, Northern Virginia Regional Commission
- The Virginia Municipal Stormwater Association (VAMSA)
- The Chesapeake Bay Foundation (CBF)
- Hampton Roads Planning District Commission (HRPDC)
- The City of Charlottesville

The comments are provided below, followed by DEQ response to each comment.

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1. ***Norman Goulet, Northern Virginia Regional Commission:** I would like to offer an additional comment on the flowing language: A plan shall be submitted outlining the provisions for the long-term responsibility, maintenance, and verification, of all projects funded through the SLAF. These provisions shall include, at a minimum, a description of the requirements for maintenance of the practice, a schedule of inspection and maintenance, and the identification of a person or persons who will be responsible for maintenance. Long-term responsibility and maintenance requirements for funded projects located on private property shall be set forth in an instrument recorded in the local land records and shall be consistent with 9VAC25-870-112 of the Virginia Stormwater Management Program (VSMP) Permit Regulations. Post-construction documentation shall be submitted to include a Certification of Completion and As-Built Record Drawing. While the SLAF Program is open to both regulated and unregulated jurisdictions the overwhelming majority of the applicants are MS4 jurisdictions and are required as part of the Permit to incorporate these items in their Program Plan. Most localities are pursuing SLAF grants to meet MS4 permit special conditions, they already have requirements to inspect and maintain publicly-owned facilities. There is no distinction on reason for installing the SWMF BMP, just that they inspect and maintain. Between those requirements and the BMP Warehouse, this seems duplicative at best. I would offer the following language modifications: If the Applicant does not hold a VPDES MS4 permit. A plan shall be submitted outlining the provisions for the long-term responsibility, maintenance, and verification, of all projects funded through the SLAF. These provisions shall include, at a minimum, a description of the requirements for maintenance of the practice, a schedule of inspection and maintenance, and the identification of a person or persons who will be responsible for maintenance. Long-term responsibility and maintenance requirements for funded projects located on private property shall be set forth in an instrument recorded in the local land records and shall be consistent with 9VAC25-870-112 of the Virginia Stormwater Management Program (VSMP) Permit Regulations. Should the Applicant not submit Post-construction documentation to the Virginia DEQ BMP Warehouse the Applicant shall submit Post-construction documentation to include a Certification of Completion and As-Built Record Drawing. Thank you for your consideration.*

DEQ response: Considering 1) the financial share of projects that the SLAF is providing, 2) the type and nature of projects that can be funded by the SLAF not necessarily aligning with MS4 Program requirements, and 3) the need to ensure that grant funds are disbursed as efficiently as possible in order to continue to fund more projects, the completion of these requirements for all projects funded through SLAF is reasonable in order to ensure that the projects are built as planned and provisions for their long term maintenance are in place. In the event that these SLAF Program requirements are met through activities meant to maintain MS4 compliance, it is not overly burdensome to provide this information directly to the SLAF Program. As such, no additional changes to this section are proposed.

1. VAMSA: *The Draft Guidelines do not include any accommodations for grandfathered stream restoration projects (the methodology for calculating total phosphorus and total nitrogen reductions under Attachment A require that a SLAF applicant submit site-level data including stream bank soil TN and TP concentrations). As VAMSA noted during the stakeholder discussions, the Expert Panel Consensus Recommendations to Improve Protocols 2 and 3 for Defining Stream Restoration Pollutant Removal Credits states that the new requirements therein are not effective until July 1, 2021 and that any project already implemented or "under contract" as of July 1, 2021 is not required to follow the new guidelines. VAMSA requests that DEQ reconsider its position on this point and allow grandfathering for any project that was still in the design phase as of July 1, 2021. This is fair and consistent with the Bay approach. In addition, VAMSA understands that there are not more than a dozen or so outstanding projects that would fall into this category; accommodating these projects would not have major impacts on the larger SLAF program. VAMSA requests that DEQ allow grandfathering for any project that was still in the design phase as of the July 1, 2021 date. This is fair and is consistent with the Bay approach. In addition, if a project has design plans that have been approved, requiring that they backtrack and confirm with the new protocol is also inconsistent with awarding points for project readiness." Suggested text: "For the purpose of determining whether a project is "Grandfathered" (p. 2-3 of the Expert Panel Report), "under contract" shall be defined as having established a contract to design the restoration."*

DEQ response: The grandfathering provisions in the Expert Panel reports and the 2021 Unified Guide apply to the crediting of pollution reduction in terms of reducing the delivery of sediments and nutrients to the Chesapeake Bay. The SLAF Program Guidelines provide the basis for the scoring, ranking, and award process of qualified projects for a competitive grant program related to reducing water quality pollutant loads. It is not practical or fair to provide these provisions to score projects for grant award that may or may not be less effective at reducing water quality pollutant loads than other projects based solely on when they started. Collecting site specific soils data for the purpose of calculating a projected nutrient reduction for scoring purposes provides the most objective means to evaluate projects based on their projected nutrient reductions. Additionally, these requirements do not present an obstacle to design processes in progress, are a grant eligible expense, and do not preclude a grant recipient from reporting pollution reduction credits based on the use of default nutrient concentrations in stream sediment. Thus, no changes to the program guidelines are required to incorporate the grandfathering provisions outlined in the 2021 Unified Guide.

2. *VAMSA: The Draft Guidelines include Section IV FISCAL STRESS (COLG Composite Stress Index and local Funding (MAXIMUM 75 points). Draft Guidelines, p. 6. This section also includes a statement that 25 points will be awarded “to any applicant that has established a dedicated local funding /revenue mechanism for stormwater capital projects.” It is not clear whether DEQ intends for these points to be available only to fiscally stressed applicants or to all applicants. VAMSA supports the latter. Establishing a dedicated local funding/revenue mechanism, whether it is a stormwater utility or a tax-based fee, is challenging at the local level and should be acknowledged by the SLAF program*

DEQ Response: Points in this section are awarded to all applicants.

3. *VAMSA: The Draft Guidelines award 20 points under Readiness To Proceed for an “Executed engineering contract with approved task order issue or in-house engineering approved by applicant for this project.” Draft Guidelines, p. 6. VAMSA appreciates the changes DEQ made to this text, as compared to the previous draft which provided points for “Executed engineering contract with approved task order and notice to proceed issued for this project.” However, VAMSA believes the Draft Guidelines would be clearer if this language were edited as follows: “Executed engineering contract with documentation that the engineering firm has been asked to move forward with this project or confirmation that in-house engineering resources have been assigned and are proceeding with this project.*

DEQ Response: An approved task order is part of the required documentation for inclusion of engineering expenses under a SLAF grant, so utilizing this requirement to assign points for Readiness to Proceed is appropriate.

1. *CBF: Establish clear benchmarks for cost efficiency cut-offs and incentivize highly effective projects. We urge DEQ to provide a rationale for efficiency cutoffs for projects (i.e., \$50,000 per pound of phosphorus). While DEQ has historically not included the cutoffs in the guidelines, we urge the agency to provide documentation to the public to justify why a certain cutoff efficiency is appropriate. For instance, DEQ could utilize two times the average rate of nutrient credit acquisitions for both nitrogen and phosphorus. If credit purchases could be made at one half the price, it is unclear why DEQ should fund the project. Other lines of evidence could also be utilized, but these cutoffs should not be ambiguous and should be transparently shared with applicants and the public. In the latest solicitation, 82 percent of the pollution reduction was achieved by one-half of the funding. There was a 42-fold difference in the efficiency of projects between the most and the least efficient. Historically, the median efficiency of a project supported through the fund has been approximately \$11,000 per pound of phosphorus. Forty-seven projects have been funded that have cost effectiveness better than \$5,000 per pound of phosphorus, which represents an order of magnitude of greater effectiveness than the currently utilized efficiency cut-off of \$50,000 per pound of phosphorus (Figure 3). Twenty-four projects were funded that have efficiencies less effective than \$40,000 per pound of phosphorus. Despite drastic differences in efficiencies, these different classes of projects receive the same cost-share percentage. We encourage DEQ to incentivize more effective projects by providing a higher proportion of cost share to*

these projects and/or a reduced cost-share rate for the least effective projects. Incentivizing the most efficient projects and discouraging the least efficient would help ensure these dollars are used as effectively as possible. Specifically, we suggest providing higher levels of cost share to projects that are highly efficient (i.e., less than \$10,000 per pound of phosphorus—or some new evaluation that arises after the incorporation of nitrogen). We also suggest considering a lower cost-share rate for projects that are just on the cusp of funding due to cost-effectiveness (i.e., lower cost-share rate for projects greater than \$40,000 per pound of phosphorus).

DEQ Response: As currently stated in the SLAF guidelines, the DEQ Director reserves the right to set a maximum allowed cost per pound of total phosphorous (TP) or total nitrogen (TN) removed (or purchased) based on the pool of applications received during any given funding cycle. Therefore the guidelines document does not need to be updated. We will consider this comment during the next funding cycle, however, it should be noted that a project's nutrient removal efficiency is already considered in the Priority Ranking criteria.

2. *CBF: Provide higher cost-share rates for fiscally stressed communities. We urge DEQ to provide higher cost-share percentages (at least 75 percent) for fiscally stressed communities which historically have not accessed this fund at a high level, despite significant pollutant reduction needs, as specifically allowed for by the statute. Further, we urge DEQ to clarify the level of cost-share that these communities can receive in funding within the guidelines. This information is important in ensuring fiscally stressed local governments can plan for the local investment needed for a project.*

DEQ Response: The updated guidelines include provisions to allow DEQ to provide a grant that accounts for more than 50% of the total eligible project cost for localities with high or above average fiscal stress. Therefore, the guidelines document does not need to be updated. The program plans to implement a higher cost-share ratio for localities with high or above average fiscal stress. It is important to provide flexibility within the guidelines to allow for changes in implementation based on available resources.

3. *CBF: Add a scoring component related to climate resiliency. We recommend incentivizing projects that show clear signs of incorporating resiliency to climate change. Practices such as living shorelines have clear resiliency benefits that should be awarded and prioritized. Other project types could be rewarded for this scoring component by showing incorporation of future impacts (i.e., sizing and design that incorporates considerations of increased intensity, duration, and frequency of precipitation events).*

DEQ Response: While DEQ supports activities that increase climate resilience, there is currently not an objective means to evaluate climate resiliency as it pertains to stormwater BMP design.

1. *City of Charlottesville: Grant Application / Award Process, Page 2 - Please consider allowing electronic submission of SLAF application forms and necessary support documentation. Multiple copies of applications and supporting documentation, often for multiple projects being submitted, makes for an overabundance of paper and ink usage, postage costs, and delivery related impacts. Electronic submittals would be a more sustainable option.*

DEQ Response: In response to feedback, the submittal of electronic reimbursement requests has been specifically allowed for in the guidelines document. The submittal of hard copy planning documents is critical to the review of the stormwater Best Management Practice (BMP) design and nutrient reduction calculations. As such, application documents should be submitted on paper. DEQ will continue to evaluate this business need in context of the application review process to eliminate paper waste and associated costs to the extent practicable.

2. *City of Charlottesville: Grant Percentage, Page 3 – Please consider allowing a “contingency” fund of SLAF dollars for approved projects. In previous years, as much as 20% of the authorized SLAF grant amount was available to help offset unanticipated project costs. It can be up to or more than two years between the authorization of SLAF funds and the receipt of construction bids. In that timeframe, inflation and other cost escalation factors can significantly affect the cost of approved projects. The SLAF contingency funds could be matched 50/50 with local dollars.*

DEQ Response: Applicants are permitted to include contingency line items in the grant budgets submitted to DEQ. The practice of allowing additional post-award contingency allocations creates uncertainties in the funding that is made available in any given grant solicitation, and has been removed from the program.

3. *City of Charlottesville: Attachment A, sections 1) b) ii), 2), and the “Other Practices” table, Pages 8 and 9 – should these sections reference the revised January 20, 2015 date of the Expert Panel report instead of the October 2012 report? The links provided are correct and go to the 2015 version of the report.*

DEQ Response: The date in the table has been updated to reflect the revised document date.

1. *HRPDC: [A]s costs for BMP construction and implementation continue to rise, there is concern that many projects will be unable to achieve the \$50,000/lb TP criteria that has traditionally been used to determine whether or not a project is cost-effective. To address this concern, we propose the SLAF Guidelines include a sliding scale for the cost-share, such that projects that can't achieve that value may still receive some funding that could be below the 50/50 match required. Alternatively, this could allow for highly cost-effective projects to receive more of the cost-share percentage. For example, if a project exceeds the \$50,000/lb TP criteria, the applicant could receive a 30% cost-share, and if the project is below the \$50,000/lb TP*

criteria, the applicant could receive a 70% cost-share. This sliding scale would incentivize projects to find cost-effective solutions, while still providing some funding when costs are high and markets for supplies and contractors are beyond the control of a locality.

DEQ Response: As currently stated in the SLAF guidelines, the DEQ Director reserves the right to set a maximum allowed cost per pound of total phosphorous (TP) or total nitrogen (TN) removed (or purchased) based on the pool of applications received during any given funding cycle. Therefore the guidelines document does not need to be updated. We will consider this comment during the next funding cycle, however, it should be noted that a project's nutrient removal efficiency is already considered in the Priority Ranking criteria. Scaling cost share percentages to maximize nutrient removal efficiency may ultimately lead to a less diverse suite of best management practices being funded in type, i.e., stream restoration projects have consistently been the most cost-effective projects in each of the SLAF solicitations, and would quickly consume an even greater share of available funding due to the relatively high cost of stream restoration projects. Additionally, the regional variability in costs for stormwater BMP design and construction could direct funding away from areas with fewer available practitioners and higher need, ultimately making a statewide program available to fewer localities.

2. *HRPDC: In this vein, we also request that the Guidelines consider adjusting the minimum (\$50,000) and maximum (\$5,000,000) allowable amounts. Considering the high costs of design, materials, and construction, the cap may need to be increased. In contrast, sometimes small portions of a project may only need to be funded, and the minimum could be lowered.*

DEQ Response: The minimum and maximum grant amounts may be adjusted at the discretion of the DEQ Director. This discretion will be considered during each funding cycle.

3. *HRPDC: In the interest of rising costs and while not directly addressed in the draft Guidelines, we would like for DEQ to consider adding in allowable contingencies. Costs considered now may increase with time due to global market fluctuations, inflation, and other issues beyond a local government's control. Setting an allowable contingency percentage would provide assurance that proposed projects could still get funded if current estimated costs are exceeded in the future.*

DEQ Response: Applicants are permitted to include contingency line items in the grant budgets submitted to DEQ. The practice of allowing additional post-award contingency allocations creates uncertainties in the funding that is made available in any given grant solicitation, and has been removed from the program.

4. *HRPDC: We also encourage DEQ to consider adding a section that includes points for co-benefits. Increasingly, BMP implementation projects are being developed to address a variety of needs in addition to Bay and local TMDLs. Increased flooding, sea level rise, and*

precipitation must also be addressed through green and gray infrastructure. Adding points to the scoring criteria for additional co-benefits will ensure that projects that address water quality, as well as quantity, will receive funding.

DEQ Response: While DEQ is supportive of the additional benefits projects funded by the SLAF may provide, it is not authorized to direct grant awards towards projects that are alternative to the fund's purpose. Additionally, awarding points for items that have traditionally been considered ineligible would constitute a major revision to the guidelines with changes in several other sections required. DEQ will continue to participate in the discussion of co-benefits as a concept to determine whether their inclusion in subsequent revisions to the guidelines are appropriate.