

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**WATER PERMITTING DIVISION**

**P.O. BOX 1105**

**RICHMOND, VA 23218**

**SUBJECT:**       **Guidance Memo No. 18-2002**  
                  Amended Implementation Guidance for Financial Capability Regulation,  
                  9VAC25-650.

**TO:**             Regional Directors

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



**DATE:**         April 17, 2018

**COPIES:**       James Golden, Regional Water Compliance Managers, Regional Water Permit Managers, Jerome Brooks, Allan Brockenbrough, Elleanore Daub, Justin Williams, Leslie Beckwith, Jeff Reynolds, Kristen Sadtler

**Summary:**

This guidance document provides direction to staff in implementing the provisions of 9VAC25-650, *Closure Plans and Demonstration of Financial Capability* (the Financial Assurance Regulation or Regulation), instruction on how to access funds to implement the closure plans required by the Regulation, and procedures to follow when permittees fail to comply with the provisions of the Regulation or when a facility ceases operations. This guidance document amends and supersedes the provisions of Guidance Memorandum No. 01-2002, dated January 10, 2001.

**Appendix A** to this Guidance Memo is a procedure document for review of financial assurance mechanisms by Central Office staff in the Office of Financial Responsibility and Waste Programs.

**Appendix B** is a listing of facilities identified as of July 2017 as being subject to the requirements of the Regulation.

**Appendix C** is an outline of the process to be used in determining that a facility has ceased operation and in ensuring that a closure plan is thereafter implemented.

**Appendix D** is a new change of ownership form which addresses financial assurance.

**Appendix E** is a revised application addendum with templates for certain types of closure plans and a third party implementation agreement as well as an Application for Closure Plan Approval.

**Appendix F** contains workflow diagrams for processing financial assurance documents.

**Appendix G** contains a Completion of Closure Plan Activity Certificate.

**Electronic Copy:**

An electronic copy of this guidance document in PDF format is available for staff internally on DEQNET and for the public on DEQ's website at:

<http://www.deq.virginia.gov/Programs/Water/Laws.Regulations.Guidance/Guidance/WaterPermitGuidance.aspx>.

**Contact Information:**

Please contact Eleanore Daub, Office of VPDES Permits, (804) 698-4111, [Eleanore.Daub@deq.virginia.gov](mailto:Eleanore.Daub@deq.virginia.gov) or Leslie Beckwith, Office of Financial Responsibility and Waste Programs, (804) 698-4123, [Leslie.Beckwith@deq.virginia.gov](mailto:Leslie.Beckwith@deq.virginia.gov) with any questions regarding the application of this guidance.

**Disclaimer:**

**This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.**

## **Background and Intent**

In March 2000, the Governor approved Senate Bill 177, which resulted in the amendment of the Code of Virginia by adding §62.1-44.18:3; *Permit for private sewerage facility; financial assurance; violations; waiver of filing*. This section of the Code requires owners of privately owned sewerage systems or sewerage treatment works that discharge more than 1,000 per day and less than 40,000 gallons per day of sewage to “file with the Board a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations.” The plan must include a demonstration of financial capability to implement the plan. (§62.1-44.18:3.A)

The Code defines “ceases operations” as ceasing to conduct normal operation of a treatment facility regulated under the State Water Control Law (the Law) “under circumstances where it would be reasonable to expect that such operation will not be resumed”. (§62.1-44.18:3.A) In addition, the Code provides for waiver of plan filing requirements, with local government approval, for persons who operate treatment facilities that discharge less than 5,000 gallons per day of sewage and who have complied with statutory and regulatory requirements for facility operation for a period of not less than five years. (§62.1-44.18:3.B)

The Financial Assurance Regulation, 9VAC25-650; *Closure Plans and Demonstration of Financial Capability* was initially adopted by the State Water Control Board (the Board”) as an emergency regulation at its December 2000 meeting. A final regulation was later issued on December 5, 2001. While the Code does not define “sewerage system” or “sewerage treatment works”, the Regulation does define a “treatment works” as “[a]ny devices and systems used for the storage, treatment, recycling, or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.” (9VAC25-650-10) Additionally, the Regulation defines “sewage” as “[t]he water-carried human wastes from residences, buildings, industrial establishments, or other places together with such industrial wastes, underground, surface, storm, or other water, as may be present.” (9VAC25-650-10)

As indicated in the Legislative Action Summary for Senate Bill 177, the legislation was proposed in response to incidents in Henry County where a private utility company abandoned two sewage treatment lagoons serving a number of single family homes. The Department was concerned that, in those cases, public funds were used to continue operation of the systems in order to avoid the public health or environmental impacts attendant on an abrupt cessation of essential sewer services for those private residences.

## **Applicability**

The Regulation applies to persons who own or operate permitted or unpermitted privately owned sewage systems subject to the requirements of the VPDES Permit Regulation, that treat sewage generated by private residences and that discharge more than 1,000 gallons and less than 40,000 gallons per day of sewage to State waters. For purposes of application of the Regulation, the design flow of the facility should be considered in determining whether a closure plan and demonstration of financial capability is required. Also in recognition of the legislative intent behind the statutory provisions, Department staff will limit the applicability of the Regulation to third party owners or operators of sewage systems, i.e. it is the Department’s position that the General Assembly did not intend that individuals, organizations (e.g. homeowners associations, churches, ashrams) or their members indemnify themselves against cessation of service when they themselves both own the sewage system and receive the service.

The Regulation defines private residences as buildings or portions of buildings, which serve as a permanent residence, where sewage is generated. The definition includes single family homes, town homes, duplexes, condominiums, mobile homes and apartments but not hotels, motels, seasonal camps, nursing homes, schools and

industrial facilities that do not serve as residences. Where the party served by the treatment system holds the title to the residential property, continual residence for one or more years serves as proof of intent to stay indefinitely. For leased premises, a lease term of one or more years serves as proof of intent.

The Regulation defines a “privately owned sewerage system” as “any device or system that is: (1) used in the treatment of sewage (including sewers, pipes, pump stations or other conveyances if they convey wastewater to the privately owned sewerage system) and not owned by the United States, a state, or a local government.”

**Submittal Requirements, Dates and DEQ Review Timelines**

The Regulation requires that three items be submitted to DEQ for review and approval:

1. A closure plan
2. A cost estimate for implementing the plan
3. A financial assurance (FA) mechanism to fund plan implementation

The following table presents the submittal requirements and DEQ review periods for each of the three items:

Item	Owner/Operator Submittal	Owner/Operator Review and Update	DEQ Review Deadline
<i>Application for New VPDES Permit</i>			
Closure Plan	Concurrent with permit application	Note: At the end of the permit term, the owner/operator must review the plan. Updated plan due with application for reissuance.	Regional Office reviews for technical adequacy – 60 days  Central Office FA reviews to ensure compliance with Regulation – 60 days
Cost Estimate	Concurrent with closure plan	Note: At the end of the permit term, the owner/operator should review the cost estimate. Due with updated closure plan. Adjusted annually for inflation 60 days prior to anniversary date of financial assurance mechanism.	Regional Office reviews updated cost estimates for technical adequacy – 60 days.  Central Office FA reviews to ensure consistency with other closure plans and will confer with Regional Office staff – 60 days.
Financial Assurance	Proposed FA mechanism concurrent with cost estimate. An approvable mechanism must be submitted 90 days prior to discharge to State	Adjusted annually for inflation. Adjusted contemporaneously if change	Central Office FA

Mechanism	waters.	in cost estimate.	reviews – 30 days
<i>Application for Reissuance of VPDES Permit</i>			
Closure Plan	Concurrent with permit application	End of each permit term. Updated plan due with application for reissuance.	Regional Office reviews for technical adequacy – 60 days  Central Office FA reviews to ensure compliance with FA Regulation – 60 days
Cost Estimate	Concurrent with closure plan	End of each permit term. Due with updated closure plan. Adjusted annually for inflation 60 days prior to anniversary date of financial assurance mechanism.	Regional Office reviews updated cost estimates – 60 days  Central Office FA reviews to ensure consistency with other closure plans, appropriateness of inflation adjustments and will confer with Regional Office staff – 60 days.
Financial Assurance Mechanism	FA mechanism already in place. Where applicable, an approvable mechanism must be submitted 90 days prior to discharge to State waters.	Adjusted annually for inflation. Adjusted contemporaneously if change in cost estimate.	Central Office FA review – 30 days

**Closure Plan, Cost Estimate and Financial Assurance Mechanism for New Discharges or Increased Discharges (Expansions) from Existing Facilities (See also Appendix F workflow diagram)**

The Regulation requires that the closure plan, cost estimate and draft financial assurance mechanism must be submitted for DEQ review and approval at the time of application for the new or increased discharges (expansions) of VPDES facilities (see Appendix E for template closure plan, third party implementation agreement documents for use by permittees). Closure plan technical adequacy and an assessment that the cost estimate is a reasonable reflection of the projected cost to implement the plan is performed by Regional Office VPDES staff, with technical assistance provided by the Central Office VPDES staff. Central Office Financial Responsibility staff perform review of the financial assurance mechanism and closure plan for regulatory compliance. If the proposed financial assurance mechanism is submitted to the DEQ Regional Office, it should be immediately forwarded to the Central Office Manager of the Office of Financial Responsibility and Waste Programs.

The Regulation requires that DEQ review and approve or reject the closure plan, cost estimate and proposed financial assurance mechanism within 60 days of receipt. After all the approvals are completed, the Regulation requires that the owner submit an approved financial assurance mechanism to DEQ at least 90 days prior to discharging (or increasing the discharge) from the facility to State waters.

**DEQ water permitting staff should not issue a VPDES permit for a facility discharge unless the closure plan, cost estimate and financial assurance mechanism have been approved. Additionally, the Regulation requires an approved financial assurance mechanism must be in place at least 90 days prior to the date the facility discharges to State waters. The VPDES**

**permit should contain a special condition that prohibits discharges or increased discharges to State waters until the approved financial assurance mechanism is in place.**

**Closure Plans, Cost Estimates and Financial Assurance Mechanism for Existing Discharges (See also Appendix F workflow diagrams)**

Once a closure plan, cost estimate and a financial assurance mechanism are in place, periodic review and updating is required. The Regulation requires that the permittee revise the cost estimate and financial assurance mechanism to account for inflation annually. The Regulation also requires that the closure plan and cost estimate be reviewed by the permittee for continued accuracy, and updated if necessary, at the end of each VPDES permit term to ensure that the plan and estimate will receive DEQ approval during the permit reissuance process.

1. Annual review of cost estimate and financial assurance mechanism: The Regulation requires the permittee to revise the cost estimate to account for inflation 60 days prior to the anniversary date of the approved financial assurance mechanism. The financial assurance mechanism must then be adjusted accordingly for inflation by its anniversary date and appropriate original documentation of the adjustment must be submitted to the Department. The financial assurance mechanism is reviewed by the Central Office Financial Responsibility staff as is the reasonableness of the cost estimate compared to estimates for implementation of similar closure plans. The Central Office Financial Responsibility staff will confer with Regional permitting staff on this analysis. While neither the Code nor the Regulation specify when the revised estimate and adjusted mechanism are to be submitted for review the Code does indicate that the Board may require that the instruments be updated “as appropriate”. DEQ interprets this language to mean that the revised estimate and mechanism must be submitted to Office of Financial Responsibility for review and approval at least 30 days prior to the anniversary date of the currently approved mechanism. Submittal within this timeframe will allow for further adjustments to the mechanism, as a result of staff comment, prior to the time that the currently approved mechanism expires and will subsequently avoid a period of underfunded assurance. This requirement is currently part of VPDES municipal permit special conditions. Central Office Financial Responsibility staff will notify the Regional Office staff when the annual review is past due.

Annual cost adjustments can be made by the permittee by using an inflation factor derived from the most recent Implicit Price Deflator for the Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business which can be found at:

<http://bea.gov/iTable/iTable.cfm?reqid=9&step=3&isuri=1&903=13#reqid=9&step=3&isuri=1&903=13>.

2. Review of closure plan and cost estimate at the end of the permit term: The Regulation requires that the permittee review the closure plan and cost estimate at the end of the VPDES permit term and that the permittee submit the plan, the cost estimate and a written summary of their review, and of any modifications to the plan or cost estimate, concurrently with the application for permit reissuance. Should the permittee’s review of the closure plan and cost estimate result in changes to the cost estimate greater than that which would result from the annual inflationary adjustment, the resulting increase to the existing financial assurance mechanism should be made and the mechanism for the new permit term should be submitted to Central Office Financial Responsibility staff for review and approval. The VPDES application addendum has been modified to include the submittal of this information to the Office of Financial Responsibility (see Appendix E).

The Regulation requires that DEQ review and approve or reject the closure plan and cost estimate within 60 days of receipt. Both Regional Office staff and Central Office Financial Responsibility staff review the closure plan. Central Office Financial Responsibility staff alone, when it is adjusted for inflation, review the cost estimate. Upon approval of the plan and cost estimate the permittee should be requested to submit the financial assurance mechanism within 10 days.

**DEQ water permitting staff should not reissue a VPDES permit for a facility discharge unless the closure plan, cost estimate and financial assurance mechanism have been approved. Additionally, the Regulation requires an approved financial assurance mechanism must be in place at least 90 days**

**prior to the date the facility discharges to State waters. The VPDES permit should contain the special condition language in the permit manual that prohibits discharges or increased discharges to State waters until the approved financial assurance mechanism is in place.**

**An exception may be made for those cases where it is evident from the actions of the permittee during the prior permit cycle that the permit is being retained solely for the purpose of enhancing the value of a property rather than because the permittee intends to build or operate a sewage treatment facility on the property. If the exception is made and a financial assurance mechanism is not to be in place at permit issuance the VPDES permit should contain the special condition language in the permit manual which prohibits discharges to State waters until the approved financial assurance mechanism is in place.**

3. Review of closure plan and cost estimate during the permit term. Where the closure plan is revised during the permit term and the resulting cost estimate is changed, both Regional Office staff and Central Office Financial Responsibility staff should perform their respective reviews of the revised closure plan and new cost estimate.

### **Closure Plan, Cost Estimate and Financial Assurance Mechanism Details**

The following sections provide detailed explanations of the requirements for each of the three items that must be submitted to DEQ.

#### **1. Closure Plan**

**Reviewer: Central Office Financial Responsibility Staff and Regional Staff**  
**Timeline: 60 day review period**

A permittee has five choices regarding closure plans and can submit a plan consisting of one or a combination of the following:

- A. Facility Closure: A closure plan including this option must ensure the cessation of the discharge to State waters (see Appendix E for Permanent Facility Closure Plan template). The closure plan must meet the requirements of the *Sewage Collection and Treatment Regulations*, 9VAC25-790 and the permittee must certify that the facility will be closed in accordance with the plan (see Appendix G for Completion of Closure Activity Certification document). The plan must also include a description of and a timeline for how influent flows will be terminated (e.g. eviction of tenants, installation of on-site treatment system). Provision must be made, if this option is proposed, to provide continued operation of the facility from the time of plan implementation to cessation of the discharge to State waters. It is the policy of the Office of Financial Responsibility and Waste Programs that for a facility closure dependent on eviction of current residents, the length of time of operation should be a minimum of 24 months. An Application for Closure Plan approval is attached at Appendix E.
- B. Connection to Alternative Treatment Works: A plan including this option must result in the cessation of direct discharge from the facility to State waters. The plan must therefore include the same elements as for the Facility Closure option with the exception of the description of how the influent flow will be terminated. In addition this plan must include a detailed plan for rerouting of the flow to the alternative treatment works. All necessary connection approvals, VDH approval (if alternative onsite is the new connection) and easement agreements must be obtained and submitted as part of the plan.
- C. Transfer of the Facility to Local Government: A plan including this option must include written agreement by the local government (or sewage treatment authority) that, upon the direction of DEQ to implement the plan, the local government or authority will take over and operate the facility in accordance with the requirements of the VPDES permit which it will agree to have transferred to it in accordance with the provisions of the VPDES Permit Regulation.

D. Contract Operation: This option is similar to the local government transfer option above, except that the responsibility for operation would be transferred to a private entity rather than a local government. Contract operation must be by a named private company or other entity licensed to operate wastewater treatment facilities in Virginia and licensed to operate the specific type of facility to which the plan applies. A signed contract, executed by the contract operator, contingent only upon approval of the closure plan by DEQ, must be submitted as part of the plan, together with a copy of the required operator's license. Furthermore, the contract must specify that upon direction by DEQ or a third party named in the plan, the contractor shall:

1. operate the facility for the term specified in the contract (at least two years); and
2. operate the facility in accordance with the terms and conditions of the VPDES permit, as required by the Law (i.e. Section 62.1-44.5 of the Law indicates that it is illegal to discharge except in compliance with the conditions of a permit issued by the Board). [Note: The Law does not allow this liability to be contractually eliminated although operators may indemnify themselves from it through contractual terms.)

The entity named as the contract operator must be an independent third party (e.g. not owned by or a subsidiary of the permittee). The contract may limit the liability of the contract operator to the amount of the permittee's financial assurance (see Appendix E for 24 Month Contract Operation Closure Plan template).

E. Alternative Plan: Because the Law is not specific as to the type of closure plan required, the Regulation allows a permittee to submit an alternative plan that will satisfy the requirements of the Law, i.e. to abate, control, prevent, remove or contain any substantial threat to public health or the environment resulting from the cessation of operations at the facility. If an alternative plan is submitted staff must exercise professional judgment in evaluating whether the plan meets the requirements of the Law. Any plan submitted must satisfy the following criteria:

1. The plan must result in there being no substantial threat to public health or the environment resulting from the cessation of operations; and
2. The plan must ensure the continued operation of the facility in accordance with regulatory requirements from the time the plan is implemented until the plan is completed.

Review of alternative plans should be performed as part of a collaborative effort between Regional Office staff and staff of the Office of VPDES Permits to ensure statewide consistency of acceptance criteria for alternative plans.

The alternative closure plan option in 9VAC25-650-60.C.5 allows flexibility in establishing a plan which accomplishes the goal of the Law and the Regulation, namely, to establish 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 the permittee ceases operations of a facility. As noted above, the contract operation closure plan option of 9VAC25-650-60.C.4 requires a minimum two-year operational period be provided by a third party. The two-year operational period provides time for a final disposition of the facility operations to be established should the permittee default on its obligations. Staff may accept an alternative closure plan that establishes a minimum two-year contract operational period consistent with the Regulation or a plan with a lesser operational period provided that the permittee can demonstrate to staff's satisfaction that closure will be accomplished in a lesser amount of time. The plan must identify an independent third party facility operator, and must establish a financial instrument consistent with this guidance to ensure funding capable of covering the facility's operational and maintenance costs for the



plan's duration. Additionally, it is recommended that the plan include the costs of annual permit maintenance fees as well as a multiplier to cover unanticipated equipment repair and/or replacement costs. The funding multiplier should consider the age and condition of the facility. Staff may consider a default multiplier of 1.50 above the anticipated, computed operations and maintenance costs. Additionally, the alternative closure plan contract must include specific language that the third party operator shall hold the appropriate licensure and shall operate and maintain the facility in a workmanship-like manner, consistent with professional licensure requirements, to achieve compliance with permit limits. This alternative plan will ensure the objectives of the Law and the Regulation are met to prevent substantial and imminent threats to public health or the environment caused by cessation of facility operations.

The contract may limit the liability of the contract operator to the amount of the permittee's financial assurance.

A critical requirement of any closure plan is that the plan be carried out by a third party. The assumption is made that, because operations have ceased, the permittee either has no desire and/or no ability to operate the facility and therefore cannot be the party to implement the closure plan. The Regulation requires that closure plans designate and authorize a named third party to implement the plan (see Appendix E for template Third Party Implementation Agreement document). Any plan submitted, other than those that provide for continued operation of the facility by local government, as discussed above, must include a named third party that, upon notification by DEQ, will implement the plan. The Regulation prohibits that the third party be a parent corporation or subsidiary of the permittee.

Closure plans identifying a third party to carry out the plan must include a contract with the named third party to implement the plan. Examples of third parties that could be contracted to implement the plan include property managers, engineers, general contractors and/or contract operators.

Closure plans are subject to review and approval by DEQ. Central Office Financial Responsibility staff review the plans for compliance with the Regulation. Regional Office staff review the plans for technical adequacy. An application for closure plan approval is found at Appendix E. Closure plans with a Professional Engineer (PE) certification will generally be acceptable for assessing technical adequacy however PE certification is not required. Central Office and Regional staff coordinate their review efforts to ensure that any comments on the plans are transmitted to the permittee expeditiously. The Regulation requires that the permittee must be notified in writing of plan approval or disapproval within 60 days of receipt of the plan. If the plan is disapproved, the notification must include what measures, if any, may be taken to secure approval. The Regulation also provides that if a plan is disapproved DEQ may, in its sole discretion; promulgate a closure plan for the facility.

## **2. Cost Estimate**

**Reviewer: Regional Office VPDES Permit Staff in collaboration with Central Office Financial Responsibility Staff**

**Timeline: 60 day review period**

The Regulation requires that a detailed written estimate of the cost to implement the proposed closure plan be submitted concurrently with the plan. The cost estimate should be presented in sufficient detail so that it can be adequately reviewed by DEQ to determine if the cost estimate is a reasonable reflection of the projected cost to implement the plan. A cost estimate that only reflects a lump sum for plan implementation and which is prepared and submitted by the owner (vs. the party performing the plan), is unacceptable.

The Regulation requires that cost estimates be based on and include the costs to the permittee of hiring a third party to carry out the closure plan. These "management fees" should be listed separately from closure costs. A contract

separate from the closure plan will be required to secure these services (see Appendix E for Third Party Implementation Agreement template).

The Regulation prohibits the consideration of any salvage value that may be realized by the sale of wastes, facility structures or equipment, land, or other facility assets at the time of implementation of the plan. A cost estimate including such consideration can therefore not be approved.

Cost estimates are subject to review and approval by DEQ. The Regulation requires that the permittee must be notified in writing of approval or disapproval within 60 days of receipt of the estimate. If the estimate is disapproved, the notification must include what measures, if any, may be taken to secure approval. The Regulation also provides that if an estimate is disapproved DEQ may, in its sole discretion; promulgate an estimate for closure of the facility.

### **3. Financial Assurance Mechanism**

**Reviewer: Central Office Financial Responsibility Staff**  
**Timeline: 30 day review period**

The Regulation specifies six allowable mechanisms which can be used to demonstrate financial capability to implement the closure plan. Except for mechanisms guaranteeing performance rather than payment, they may be used in conjunction with each other to demonstrate financial capability. The six allowable financial assurance mechanisms are:

- Trust Agreements
- Surety Bonds
- Letters of Credit
- Certificates of Deposit
- Corporate Financial Tests
- Corporate Guarantees

**Original financial assurance mechanisms should be sent by the permittee, to Central Office Financial Responsibility staff via a form of trackable mail (UPS, FEDEX or USPS tracked mail). The new application addendum (Appendix E) instructs the permittee to do that. In the event original financial assurance mechanisms are received at the Regional Office, the documents should immediately be sent to Central Office Financial Responsibility staff via UPS, FEDEX or USPS tracked mail. Should Regional Office staff receive an original financial assurance mechanism they should also contact the Manager of the Office of Financial Responsibility and Waste Programs. These documents should NOT be scanned or entered into ECM.**

Appendix A – *Virginia Department of Environmental Quality, Financial Responsibility Demonstration Review Procedures, Private Sewage Treatment Facilities* – details the procedures to be used by Central Office Financial Responsibility staff in the review of allowable mechanisms.

#### **Procedures for annual Financial Assurance (FA) review/adjustment and determination of non-compliance with FA requirements**

1. Compliance with the annual financial assurance review/adjustment requirements is determined by the Office of Financial Responsibility and Waste Programs. The Financial Responsibility staff will notify the Regional compliance auditor (CA) of any non-compliance via email (with a copy to the permit writer) no later than 30 days after the anniversary date, and continue to send the email referrals to the CA (with a copy to the permit writer) each month until the requirements are met. Once the owner of the facility is back in compliance, the Financial Responsibility staff will notify the CA via email (with a copy to the permit writer) no later than 30

days after the date compliance is achieved. Note the anniversary date is the compliance due date which is based on the date of the establishment of the approved financial assurance mechanism.

2. Based on the referral email received from the Financial Responsibility staff, the CA will enter the violations in CEDS and issue a Warning Letter (WL) or (as appropriate) a Notice of Violation (NOV) in a timely manner. The WL should name a Financial Responsibility staff member as the contact for financial assurance information and copy the Financial Responsibility staff member. The WL/NOV response due and received dates are tracked in CEDS by the CA. Since the letter will indicate the Financial Responsibility staff member as the FA contact, any FA related response (the WL may address other violations) will be sent to Financial Responsibility staff directly. As shown in the example below, based on the Financial Responsibility staff email referrals, the CA will continue to assess points until the CA is notified by the Financial Responsibility staff that the permittee has returned to compliance. Additional WLs may not be sent if the issue is resolved by the time the WL is to be mailed.

Example:

Financial assurance mechanism approval date: 3/16/10

Anniversary date: 3/16/11

Notification of non-compliance email to CA: 4/15/11

Compliance date: 6/1/11

Notification of compliance email to CA: 6/30/11

Points will be entered in CEDS as follows:

<u>Month</u>	<u>Pts</u>	<u>Actions</u>
March	1	Points assessed around April 25 and 1 <sup>st</sup> WL sent in early May
April	1	Points assessed around May 25 and 2 <sup>nd</sup> WL sent in early June
May	2	Points assessed around June 25 (6-month points = 4 pts)*

\*An NOV may be withheld as permittee has returned to compliance by the time the CA is to prepare the letter.

3. Financial Responsibility staff will share the financial assurance tracking sheet by referring CAs to FA document folders located on DEQNET (see DEQNET/documents/Office of Financial Responsibility and Waste Programs/VPDES permits. The CAs should verify the list of non-compliant permittees for their respective region.

### **Transfer of Ownership**

The Regulation provides that if a facility is to be sold or if ownership is to be transferred in the normal course of business the permittee must notify DEQ at least thirty days in advance of the sale or transfer. The notice must include the name, address and telephone number of the entity to whom the facility is being sold or transferred and must include a written agreement between the existing and new facility owner regarding the transfer of permit responsibilities. The Regulation further provides that the old facility owner must continue to comply with the requirements of the Regulation until the new owner has demonstrated compliance with its requirements, which must occur within six months of change of ownership. Permittees that intend to sell their facilities should be reminded of this regulatory requirement. The financial assurance requirement has been added to the Change of Ownership form in Appendix D.

**Note that for facilities that are sold or transferred where a discharge has already commenced, Regional Office staff should not allow permit transfer or modification unless the closure plan, cost estimate and an approved financial assurance mechanism are in place.**

### **Permit Termination for Failure to Provide Financial Assurance**

The Regulation indicates that failure to provide or maintain adequate financial assurance is a basis for termination of a VPDES permit. Termination of the permit is to be performed in accordance with the requirements of the VPDES Permit Regulation and Permit Manual. The Permit Regulation, at 9VAC25-31-410 indicates that termination of the permit may occur after public notice and an opportunity for a public hearing on the proposed termination. Both contested and non-contested termination steps are in the VPDES permit manual. Before terminating a permit based on lack of maintaining adequate financial assurance (e.g., not meeting the requirements of the special condition for annual cost estimate updates or not having a closure plan, cost estimate or financial assurance mechanism in place), a meeting between the Regional Office staff, Central Office enforcement staff and Central Office VPDES permit staff must take place.

### **Regional Office Responsibility**

Regional Office staff is responsible for determining whether a closure plan and its associated cost estimate and financial assurance are required for an owner applying or re-applying for a VPDES permit. Regional Office staff is also responsible for determining when these items are no longer required. A list of facilities identified as of July 2017 as being subject to the requirements of the Regulation is shown in Appendix B (updated versions of this list can be found at DEQNET with the documents posted by the Office of Financial Responsibility and Waste Programs).

Regional Office staff is responsible for reviewing the facility closure plan and cost estimate for technical adequacy and for ensuring that the facility closure plan and cost estimate are updated to reflect changes in flow or other facility characteristics that substantially affect the facility closure plan.

Regional Office staff is responsible for ensuring that an approved facility closure plan, cost estimate and financial assurance mechanism are in place at the time of permit issuance or reissuance.

Regional Office staff is also responsible for reviewing any changes made to the facility closure plan and cost estimate, with the exception of cost estimate changes made exclusively to account for inflation.

Regional Office staff is responsible for making the final determination that a facility has ceased operations as defined in the Regulation, for overseeing implementation of the closure plan and for processing permit terminations for failure to provide or maintain adequate financial assurance. Appendix C details the procedures to be followed in determining that operations have ceased and to implement the closure plan. Appendix G is a Completion of Closure Activity Certification form.

**Note too:** under *Procedures for Determination of Non-Compliance with Financial Assurance Requirements* above, Regional compliance auditors and Central Office Financial Responsibility staff both have roles in determining, tracking and notifying permittees of noncompliance with financial assurance requirements.

### **Central Office Responsibility**

Staff from the Office of VPDES Permits is responsible for providing technical assistance in the review of closure plans and cost estimates upon request from Regional Office staff.

Financial Responsibility staff are responsible for reviewing draft financial assurance mechanisms, for approval of final financial assurance mechanisms, for review and approval of the wording of 24 month contract operation and third party closure plan implementation agreements as meeting the requirements of the Regulation, for review of cost estimate changes made exclusively to account for inflation and for collaborating with Regional Office staff in the review of annual cost estimate adjustments.

Financial Responsibility staff are responsible for ensuring that the amount of financial assurance is consistent with an approved cost estimate and for storing and locating original financial assurance mechanisms.

Financial Responsibility staff are responsible for monitoring to determine that continual coverage is being maintained once a financial assurance mechanism is in place and for notifying Regional Office staff whenever continued coverage is jeopardized.

Financial Responsibility staff are responsible for drawing on the financial assurance mechanism if the permittee fails to establish alternate financial assurance as required by the Regulation.

Financial Responsibility staff are responsible for review and approval of cost estimate changes made exclusively to account for annual inflation.

Staff from the Division of Enforcement are responsible for providing assistance, upon request from Regional Office staff, in the determination that a facility has ceased operations and in the termination of permit coverage where the permittee has failed to maintain adequate financial assurance.

**Note too:** under *Procedures for Determination of Non-Compliance with Financial Assurance Requirements* above, Regional compliance auditors and Central Office Financial Responsibility staff both have roles in determining, tracking and notifying permittees of noncompliance with financial assurance requirements.

### **Communication and Correspondence Within DEQ**

Maintaining effective communication between Central Office Financial Responsibility staff and Regional Office staff is critical. Therefore, all actions relative to financial assurance taken by Central Office Financial Responsibility staff shall be communicated to the appropriate Regional Office staff prior to taking such action.

Similarly the Regional Office staff shall communicate to Central Office Financial Responsibility staff any action or findings which could affect the status of the financial assurance mechanism or which have the potential to invoke a drawing on the mechanism.

**Regional Office staff is responsible for informing the Manager of the Office of Financial Responsibility and Waste Programs of permittees that must demonstrate financial assurance (i.e. upon application for a new permit, permit reissuance or permit transfer for those facilities that meet the statutory criteria discussed in the section above titled *Applicability*). Regional Office staff will also notify the Manager of facilities that can be removed from the list or, as applicable, when VPDES permit expiration dates change.**

Regional Office staff should provide the original DEQ approved closure plan and cost estimate to the Office of Financial Responsibility Manager.

The appropriate Regional Office staff to be copied on correspondence between the Office of Financial Responsibility and Waste Programs Manager and the permittee are:

1. The Regional Office VPDES Permit Manager should be notified of the establishment of a financial assurance mechanism.
2. The Regional Office Compliance Manager should be notified of the failure to maintain a financial assurance mechanism.

### **VPDES Permit Special Conditions**

The following special conditions must be included in all VPDES permits for facilities subject to the Regulation:

*The permittee shall provide continuous coverage to implement the approved closure plan until released from financial assurance requirements by the State Water Control Board. If a transfer of ownership or operational control of this facility occurs, the permittee shall comply with the requirements of 9VAC25-650 until the new owner or operator has demonstrated compliance with the requirements of 9VAC25-650.*

*Failure to maintain adequate financial assurance in accordance with 9VAC25-650 shall be a basis for termination of this VPDES permit.*

*During the term of this VPDES permit, the permittee shall revise the closure plan implementation cost estimate concurrently with any revision made to the closure plan which increases the closure plan cost. At a minimum, the permittee shall annually adjust the closure plan implementation cost estimate in accordance with 9VAC25-650 within 60 days prior to the anniversary date of the establishment of the approved financial assurance mechanism.*

*The permittee shall disclose the provisions of this permit to all purchasers of property served by this permitted facility in accordance with Section 55-519 of the Code of Virginia.*

**[Insert the following for new or expanding discharges only]**

*The approved financial assurance mechanism shall be filed with the State Water Control Board no less than 90 days prior to [discharge][the permitted increase in discharge] to State waters. [Discharge][An increase in discharge] to State waters shall not be permitted until an approved financial assurance mechanism is in place.*

## APPENDIX A

### VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY FINANCIAL RESPONSIBILITY DEMONSTRATION REVIEW PROCEDURES Private Sewage Treatment Facilities

#### a. Introduction

An owner of a private sewage treatment facility is required to submit the documents demonstrating its financial responsibility in the following circumstances:

- A. For new facilities, the initial application for a VPDES permit must be submitted with a closure plan and cost estimate. After DEQ approval, acceptable financial assurance must be submitted at least 90 days prior to an actual discharge to State waters.
- B. For existing facilities, where there is a desire to increase discharges, acceptable financial assurance must be submitted at least 90 days prior to the increased discharge to State waters.
- C. Within 60 days after the permittee receives notice that the financial assurance provider is bankrupt, has had its authority to issue financial assurance mechanisms revoked or suspended, or experiences any other incapacity.
- D. Immediately if a provider of assurance cancels or fails to renew the assurance mechanism and the permittee fails to obtain alternate coverage within 60 days of the notice of termination or nonrenewal.
- E. For changes in ownership or operational control of a facility, financial assurance must be submitted by the new permittee within six months of the date of the change of ownership.
- F. At any time that DEQ requests the documents.

#### b. Authority

The State Water Control Law at § 62.1-44.18:3 of the Code of Virginia provides the statutory authority to require a permittee to demonstrate financial assurance for 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 operations at the facility cease. The Financial Assurance Regulation (Regulation) at 9VAC25-650-10 *et seq.* provides the regulatory authority for this requirement.

#### 3. Definitions

The definitions in the Regulation apply to these procedures.

#### 4. Methods to Demonstrate Financial Responsibility

- A. Trust Agreement as described in 9VAC25-650-90 of the Regulation.
- B. Surety Bond as described in 9VAC25-650-100 of the Regulation.

- C. Letter of Credit as described in 9VAC25-650-110 of the Regulation.
- D. Certificate of Deposit as described in 9VAC25-650-120 of the Regulation.
- E. Corporate Financial Test as described in 9VAC 25-650-124 of the Regulation.
- F. Corporate Guarantee as described in 9VAC25-650-127 of the Regulation.

**5. Requirements for all Financial Responsibility Mechanisms**

- A. Facsimile copies or photocopies are never acceptable substitutes for original documents, if the original document is required by the Regulation. The Manager of the Office of Financial Responsibility and Waste Programs should not give approval of the document based on a facsimile or photocopy. Original financial mechanisms are always required before final approval can be granted.
- B. When the financial assurance documentation is complete and in compliance with the Regulation, the financial assurance staff must send a compliance letter to the permittee. A copy of the letter should be sent to the Regional Office VPDES Permit Manager.
- C. Original Letters of Credit, Surety Bonds and Trust Agreements are filed in the safe. Copies of these mechanisms are kept in a duplicate file. A copy of the mechanism should be sent to the Regional Office VPDES Permit Manager.

**6. Review Procedures for Financial Responsibility Mechanisms**

**Trust Agreement**

The Trust Agreement must be irrevocable and shall continue until terminated at the written direction of the grantor, the trustee and the Department, or by the trustee and the Department alone if the grantor ceases to exist. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

- A. The language of the Trust Agreement must be identical to the language described in 9VAC25-650-90.
- B. The irrevocable Trust Agreement shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage.

**Surety Bond**

Surety Bonds are issued to a permittee by a company licensed to operate as a surety in the Commonwealth of Virginia. The company must be one listed as an acceptable surety of federal bonds in the latest Circular 570 of the U.S. Department of the Treasury. (See: <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>.)

- A. The Surety Bond must be a signed, original document accompanied by a signed, notarized Power of Attorney indicating that the representative of the bonding company was authorized to sign on its behalf. The language of the Surety Bond must be identical to the language prescribed in 9VAC25-650-100 of the Regulation. The Bond heading must indicate the period of coverage, the legal name and business address of the permittee and the name and address of the facility. The penal sum of the Bond must be equal to the approved cost estimate.



- B. The appropriate terms in brackets must be included and the brackets deleted.

### **Letter of Credit**

The issuing institution must be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter of credit operations are regulated and examined by a federal agency or the State Corporation Commission.

- A. The Letter of Credit must be a signed original document. The language of the Letter of Credit must be identical to the language prescribed in 9VAC25-650-110 of the Regulation. The face of the Letter of Credit must provide the permittee name and address and the name and physical address of the facility whose operation is assured with the mechanism.
- B. The face amount of the Letter of Credit must be equal to the total cost estimate or an appropriate fraction if the Letter of Credit is used in combination with another payment mechanism.
- C. The appropriate terms in brackets must be included and the brackets deleted.

### **Certificate of Deposit**

The issuing institution shall be an entity that has the authority to issue certificates of deposit in the Commonwealth of Virginia and whose operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia).

- A. The permittee must submit the originally signed assignment and the originally signed certificate of deposit (CD), if applicable, to the Department. The language of the CD assignment must be identical to the language prescribed in 9VAC25-650-120 of the Regulation.
- B. The value of the CD must be equal to the total cost estimate or an appropriate fraction if the CD assignment is used in combination with another payment mechanism.
- C. The appropriate terms in brackets must be included and the brackets deleted.

### **Corporate Financial Test**

A permittee may satisfy the requirements for financial assurance by passing a financial test that satisfies the criteria specified in 9VAC25-650-124 of the Regulation.

- A. To demonstrate that the permittee meets the specified financial test criteria, the permittee shall annually submit a letter from its Chief Financial Officer worded exactly as specified in 9VAC25-650-124.B of the Regulation.
- B. In addition to meeting the financial criteria specified in 9VAC25-650-124.A.1 of the Regulation, the permittee must possess audited (not reviewed or compiled) financial statements for the latest completed fiscal year, and those financial statements must be accompanied by an unqualified opinion from the independent certified public accountant who prepared them. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance.

- C. All required financial test documentation shall be submitted annually within 90 days following the close of the permittee's fiscal year.

### **Corporate Guarantee**

A permittee may satisfy the requirements for financial assurance by obtaining a written guarantee from a direct or higher-tier parent corporation or direct or higher-tier parent company of the permittee, a firm whose parent corporation or parent company is also the parent corporation or parent company of the permittee, or a firm with a "substantial business relationship" with the permittee. The firm providing the guarantee on behalf of the permittee must pass a financial test by satisfying the criteria specified in 9VAC-25-650-124 of the Regulation.

- A. To demonstrate that the guarantor meets the specified financial test criteria, the guarantor shall annually submit a letter from the Chief Financial Officer worded exactly as specified in 9VAC25-650-124.B of the Regulation.
- B. In addition to meeting the financial criteria specified in 9VAC25-650-124.A.1 of the Regulation, the guarantor must possess audited (not reviewed or compiled) financial statements for the latest completed fiscal year, and those financial statements must be accompanied by an unqualified opinion from the independent certified public accountant who prepared them. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance.
- D. The guarantor must also submit a Corporate Guarantee worded exactly as specified in 9VAC25-650-127.G of the Regulation. The corporate guarantee will remain in force unless the guarantor sends a prior notice of cancellation by certified mail to the permittee and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the permittee and the Department, as evidenced by the return receipts.
- E. All required financial test documentation shall be submitted annually within 90 days following the close of the guarantor's fiscal year.

### **7. Financial Assurance Review of an Annual Update**

Each permittee must update its financial assurance by the anniversary date of its mechanism. The anniversary date is the effective date of the mechanism. In the case of a financial test from the permittee or from a guarantor in support of a guarantee on behalf of the permittee, any annually required documentation must be submitted within 90 days following the close of either the permittee's or the guarantor's fiscal year.

### **8. Financial Assurance Review Procedures in an Enforcement Action**

A permittee may be required by an enforcement action to comply with the Regulation. Regional Office staff should send copies of enforcement actions addressing financial assurance requirements to the Manager of the Office of Financial Responsibility and Waste Programs. Upon receipt of the document, the Manager of the Office of Financial Responsibility and Waste Programs will coordinate a response with the Regional Office VPDES Permit Manager and send a reminder letter to the permittee describing the available financial assurance options and reiterating the submission deadlines imposed by the enforcement action. The Manager of the Office of Financial Responsibility and Waste Programs will copy the Regional Office VPDES Permit Manager on all correspondence with the permittee or owner.

Upon receipt of the financial responsibility documents, the Manager of the Office of Financial Responsibility and Waste Programs will review the mechanism for compliance with the Regulation by comparing the language of the mechanism to the language prescribed in the appropriate section of the Regulation. The review procedures for each mechanism are provided above.

If the financial assurance documents do not comply with the Regulation, the Manager of the Office of Financial Responsibility and Waste Programs will notify the Regional Office VPDES Permit Manager and then contact the permittee by letter. The letter should impose a 30 day deadline for compliance. The Manager of the Office of Financial Responsibility and Waste Programs will copy the Regional Office VPDES Permit Manager on all correspondence with the permittee. The Manager of the Office of Financial Responsibility and Waste Programs may grant one extension to a submission deadline; however, any additional extension requests should be cleared through the Regional Office VPDES Permit Manager.

#### **9. Drawing on a Financial Assurance Mechanism**

The Department can draw on the financial assurance mechanism if it has made a final determination that the permittee has ceased operations at the facility. Additionally the Department can draw on the financial assurance mechanism if the permittee fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the Surety Bond or Letter of Credit. If the Department proceeds to draw on the financial assurance mechanism, the necessary documentation for executing the draw shall be prepared and delivered to the applicable entity by the Manager of the Office of Financial Responsibility and Waste Programs. The entity providing the funds shall either present a check made out to the Board or make a wire transfer of the funds in question to an account designated by the Department. If a check is presented, Financial Responsibility staff shall cause the funds to be deposited into the Virginia Emergency Environmental Response Fund and designate them as monies to be used for implementing the facility closure plan.

The Department cannot cash the financial assurance mechanism for failure to adjust for inflation or for failure to increase the amount of financial assurance based on a revised cost estimate for closure.

#### **10. Cancellation or Termination of a Mechanism**

- A. The Surety Bond or the Letter of Credit can be cancelled or allowed to expire by the provider of financial assurance. In these cases, the Department will act to cash the mechanism or obtain alternate financial assurance before the mechanism expiration date. The following procedures are applicable to each mechanism:

1. Letter of Credit

The financial institution providing the Letter of Credit must provide 120 days notice of cancellation or termination of the Letter of Credit to the Department and the permittee.

- a. Upon receipt of the notice, Financial Responsibility staff will notify the permittee by letter of the intended termination and direct the permittee to provide a replacement mechanism in the amount of the expiring one. The letter will direct the permittee to submit an alternate mechanism to the Department within 60 days after receiving notice of cancellation of the Letter of Credit. The letter should warn the permittee of the date and time that the Department intends to cash the mechanism if alternate financial assurance is not provided. The letter should include a copy of the cancellation notice. All correspondence from the Financial Responsibility staff to the permittee should be copied to the Regional Office Compliance Manager.
- b. If the Department has not received an acceptable replacement mechanism within 30 days of the stated expiration date, the Manager of the Office of Financial Responsibility and Waste Programs will send a demand letter, accompanied by the original Letter of Credit and a signed sight draft to the institution issuing the Letter of Credit, directing the provider to cash the Letter of Credit to the Board. The letter will give a cashing date as the stated expiration date of the Letter of Credit. The Manager of the Office of Financial Responsibility and Waste Programs will copy the Regional Office Compliance Manager on the demand letter. The Manager of the Office of Financial Responsibility and Waste Programs should also send a

copy of the demand letter to the permittee along with a letter reiterating the Department's request for an alternate mechanism.

If the Department receives an alternate mechanism from the permittee, the Manager of the Office of Financial Responsibility and Waste Programs will review it according to the procedures set out above. If the mechanism complies with the Regulation and is in the amount of the previous mechanism, the Manager of the Office of Financial Responsibility and Waste Programs will issue a letter to the financial assurance provider retracting the demand for the funds. The letter should be emailed or faxed to the provider, the permittee and the Regional Office VPDES Permit Manager and the original sent by certified mail to the provider.

- c. If the replacement mechanism does not comply with the Regulation, the Manager of the Office of Financial Responsibility and Waste Programs will contact the permittee immediately with the required changes. If the permittee submits a corrected mechanism before the cashing date then the procedures described in the previous subsection should be followed.
- d. If the permittee does not submit a replacement mechanism or submits a mechanism that does not comply with the Regulation and fails to correct the problems in time, the Department will not issue a retraction letter and the financial assurance provider will cash the mechanism. At this point Financial Responsibility staff should notify the trustee via telephone that the funds will be forthcoming and request confirmation of the receipt of funds.
- e. The Manager of the Office of Financial Responsibility and Waste Programs will contact the Regional Office Compliance Manager by memo indicating that the permittee is in violation of the Regulation and directing the Regional Office Compliance Manager to take the steps necessary to secure compliance.
- f. Upon receipt of an acceptable mechanism in the amount of the expired mechanism, the Department will return the funds to the permittee via registered mail.

## 2. Surety Bond

- a. The surety providing the Surety Bond must provide 120 days notice of the cancellation or termination of the Bond to the Department and the permittee.
- b. Upon receipt of the notice, Financial Responsibility staff will notify the permittee by letter of the intended termination and direct the permittee to provide a replacement mechanism in the amount of the expiring one. The letter will direct the permittee to submit an alternate mechanism to the Department within 60 days after receiving notice of cancellation of the bond. The notice should warn the permittee of the date and time that the Department intends to cash the mechanism if alternate financial assurance is not provided. The letter should include a copy of the cancellation notice.
- c. If the Department has not received an acceptable replacement mechanism within 60 days of the stated expiration date, the Manager of the Office of Financial Responsibility and Waste Programs will send a demand letter to the surety directing the provider to cash the Bond and transmit the entire amount of the Bond to the Board. The letter will give a cashing date of 30 days prior to the stated expiration date. The Manager of the Office of Financial

Responsibility and Waste Programs will copy the Regional Office Compliance Manager and the permittee. The Manager of the Office of Financial Responsibility and Waste Programs should also send the permittee a letter reiterating the Department's request for an alternate mechanism.

- d. The original Bond should accompany the demand letter. The letter should direct the issuing institution to transmit the entire amount of the Bond to the Board. The letter should give the cashing date as 30 days prior to the stated expiration date of the Bond.
  - e. If the Department receives an alternate mechanism from the permittee, the Manager of the Office of Financial Responsibility and Waste Programs will review it according to the procedures set out above. If the mechanism complies with the Regulation and is in the amount of the previous mechanism, the Manager of the Office of Financial Responsibility and Waste Programs will issue a letter to the surety retracting the demand for the funds. The letter should be emailed or faxed to the surety, the permittee and the Regional Office VPDES Permit Manager and the original sent by certified mail to the surety.
  - f. If the replacement mechanism does not comply with the Regulation, the Manager of the Office of Financial Responsibility and Waste Programs will contact the permittee immediately with the required changes. If the permittee submits a corrected mechanism before the cashing date then the procedures described in the previous subsection should be followed.
  - g. If the permittee does not submit a replacement mechanism or submits a mechanism that does not comply with the Regulation and fails to correct the problems in time, the Department will not issue a retraction letter and the surety will cash the mechanism.
  - h. The Manager of the Office of Financial Responsibility and Waste Programs will contact the Regional Office Compliance Manager by memo indicating that the permittee is in violation of the Regulation and directing the Regional Office Compliance Manager to take the steps necessary to secure compliance.
  - i. Upon receipt of an acceptable mechanism in the amount of the expired mechanism, the Department will return the funds to the permittee via registered mail.
- B. Disqualification of a Financial Provider. A permittee will be required to obtain a replacement mechanism if its existing financial provider is deemed ineligible to continue providing financial assurance.
- 1. A permittee must notify the Department immediately if a financial provider has filed for bankruptcy or if the provider's authority to issue the mechanism has been suspended or revoked. The permittee must provide a replacement mechanism in the amount of the existing mechanism within 60 days of the date upon which the financial provider becomes ineligible.
  - 2. Upon receipt of a replacement mechanism from the permittee, the Manager of the Office of Financial Responsibility and Waste Programs will review it according to the procedures set out above. If the mechanism complies with the Regulation and is in the amount of the current cost estimate the Regional Office Compliance Manager is contacted to confirm compliance.

3. If the permittee does not provide acceptable financial assurance to replace the existing mechanism pursuant to the previous subsection, the Manager of the Office of Financial Responsibility and Waste Programs will contact the Regional Office Compliance Manager by memo indicating that the permittee is in violation of the Regulation and directing the Regional Office Compliance Manager to take the steps necessary to secure compliance.

#### **11. Release of a Permittee from the Financial Assurance Requirements**

Where the closure plan results in the termination of a discharge to State waters and a VPDES permit for the discharge is no longer required, Regional Office staff shall verify, within 60 days after receiving certification from the permittee that the closure plan has been completed (the permittee should be directed to use the Completion of Closure Certification form found in Appendix G), whether the closure plan has been satisfactorily completed. If closure has been satisfactorily achieved, Regional Office staff shall notify the permittee in writing that financial assurance is no longer required for the facility.

**APPENDIX B**

**FACILITIES SUBJECT TO 9 VAC 25-650 CLOSURE PLANS AND DEMONSTRATION OF  
FINANCIAL CAPABILITY AS OF JULY 2017  
(See DEQNET for updates to the list below)**

<i>Region</i>	<i>Facility Name</i>	<i>Permit No</i>	<i>Design Flow</i>	<i>Closure Plan Type or Status</i>	<i>Comments</i>
BRRO	<i>Blacksburg Country Club WWTP</i>	<i>VA0027481</i>	<i>.0350</i>	Contract Operation for 24 months	Plan on T drive HOA owns STP
BRRO	<i>Bennies Mobile Home Park Sewage Treatment Plant</i>	<i>VA0061042</i>	<i>.0350</i>	Contract operation for 24 months followed by facility closure	Plan on T drive
BRRO	<i>Briarwood Village Mobile Home Park STP</i>	<i>VA0031194</i>	<i>.0240</i>	Contract operation for 24 months	Plan on T drive
BRRO	<i>Cedar Rock WWTP</i>	<i>VA0091553</i>	<i>.0150</i>	Contract operation for 24 months	Plan on T drive at: <a href="T:\OFRWP\VPDES Closure Plans">T:\OFRWP\VPDES Closure Plans</a>
BRRO	<i>Country Oaks LLC</i>	<i>VA0074586</i>	<i>.0300</i>	Contract operation for 150 days followed by facility closure	Plan on T drive
BRRO	<i>Evergreen Mobile Home Park</i>	<i>VA0062031</i>	<i>.0240</i>	Closure plan without 24 months of contract operation	Plan on T drive
BRRO	<i>Green Acres Mobile Home Park</i>	<i>VA0090174</i>	<i>.0100</i>	Closure plan without 24 months of contract	Plan on T drive

				operation	
BRRO	<i>Ramseys Mobile Home Park</i>	VA0072389	.0150	Contract operation for 24 months followed by facility closure	Plan on T drive
NVRO	<i>Ferguson Sewage Treatment Plant</i>	VA0062529	.0025		STP defunct for 13 years
NVRO	<i>Glenwood Mobile Home Park</i>	VA0068934	.0300	Contract operation for 24 months followed by facility closure	Plan on T drive
NVRO	<i>Hill Mobile Home Park Sewage Treatment Plant 2</i>	VA0090689	.0050	Contract operation for 24 months	Plan on T drive
NVRO	<i>Hiway Mobile Home Community LLC</i>	VA0074942	.0120	Contract operation for 24 months followed by facility closure	Plan on T drive
NVRO	<i>Lake Anna Environmental Services STP</i>	VA0072079	.0200	In process for reissuance	Plan being revised for permit reissuance in 2017
NVRO	<i>One Stop Trailer Park</i>	VA0074934	.0062	Plan is no longer valid; contract operator no longer in business	Plan on T drive
NVRO	<i>Twin Oaks Community STP</i>	VA0088421	.0100	Closure with 5 months of contract operations	STP owned by Commune; plan on T drive
NVRO	<i>Woodbridge Mobile Home Park STP</i>	VA0074934	.0198	Owner planning to connect	Plan on T drive



				to public sewer service	
NVRO	<i>Woodford Estates MHC Limited Liability Corporation</i>	VA0061409	.0250	Contract operation for 24 months followed by facility closure	Plan on T drive
PRO	<i>Mary Mother of the Church Abbey STP</i>	VA0024163	.0150		STP owned by Church
PRO	<i>Newton Mobile Home Court Inc</i>	VA0062421		Contract operation for 24 months	Plan on T drive
PRO	<i>Red Hill Utility LLC</i>	VA0028258	.0390	Contract operations for 3 months followed by facility closure	Plan on T drive
PRO	<i>Regatta Point Yacht Club</i>	VA0090921	.0300		Condos/STP not built yet
PRO	<i>Sign Post Estates WWTP</i>	VA0079057	.0072	Plan not required at this time	Using Alternative FA
PRO	<i>Sprouses Corner LLC STP</i>	VA0063291	.0050	Contract operation for 24 months	Apartment facility; tentative plan is to hook up to County sewer system; plan on T drive
PRO	<i>The Tides Utilities LLC North WWTP</i>	VA0029343	.0325	Contract operation for 24 months	Plan on T drive
PRO	<i>Windmill Point Resort and Yacht Harbor</i>	VA0060569	.0300	Plan is no longer valid; original contract operator is deceased	Plan on T drive
PRO	<i>Yoga Ville WWTP</i>	VA0070327	.0100		Ashram owns STP
SWRO	<i>Beeline Trailer Park STP</i>	VA0064009	.0050		5,000 gpd waiver of FA

SWRO	<i>Bellamy Manufacturing and Repair Company</i>	VA0029084	.0050		5,000 gpd waiver of FA
SWRO	<i>Deer Creek Motor coach Resort WWTP</i>	VA0092461	.0090		No longer required; facility is now a seasonal resort
SWRO	<i>Empire Mobile Home Park STP</i>	VA0065471	.0050		5,000 gpd waiver of FA
SWRO	<i>Robinette Mobile Home Park WWTP</i>	VA0092045	.0100	Contract operation for 24 months followed by facility closure	Plan on T drive
TRO	<i>Capehart Homes WWTP</i>	VA0088072	.0037	Closure plan without 24 month of contract operations	Plan on T drive
TRO	<i>Cardinal Village</i>	VA0065196	.0060	Closure plan without 24 month of contract operations	Plan on T drive
TRO	<i>Island Utilities LLC</i>	VA0091049	.0370		Condos/STP not built yet
TRO	<i>Shillelagh Estates</i>	VA0091758	.0040	Closure plan without 24 months of contract operation	Plan on T drive
TRO	<i>Sunset Bay Utilities - South</i>	VA0054003	.0395	Contract operation for 24 months; demo plan also included if needed	Plan on T drive
VRO	<i>Valley Water and Utilities/ (formerly Pine Hills Jacksons Chase WWTP)</i>	VA0090247	.0200	Contract operation for 24 months	Plan on T drive
VRO	<i>Blue Ridge MHC LLC</i>	VA0088943	.0180	Contract operation	Plan on T drive

				for 24 months followed by facility closure	
VRO	<i>Kerrs Creek LLC</i>	<i>VA0088960</i>	.0200	Contract operation for 5 months followed by facility closure	Plan on T drive; Note: Facility being closed, no users
VRO	<i>Two Hills Inc STP</i>	<i>VA0080535</i>	.0054	Alternative Plan on File	HOA owns STP; Plan on T drive
VRO	<i>Woodlawn Village Mobile Home Park</i>	<i>VA0089061</i>	.0150	Contract operation for 24 months	Plan on T drive
	<b>CURRENTLY HAVE WAIVER/ALTERNATE FA</b>				
	<b>CURRENTLY HAVE A CLOSURE PLAN AND FA ON FILE W/ DEQ</b>				
	<b>PROPOSE TO WAIVE FA CONSISTENT WITH OTHER FA DETERMINATIONS RE: LACK OF THIRD PARTY OWNERSHIP/OPERATION OF STP, FACILITY NOT BUILT</b>				

**APPENDIX C**  
**DETERMINING A FACILITY HAS CEASED OPERATIONS**  
**AND SUBSEQUENT FACILITY CLOSURE**

The Code defines “ceases operations” as ceasing to conduct normal operation of the treatment facility “under circumstances where it would be reasonable to expect that such operation will not be resumed”. (§62.1-44.18:3.A) Sale or transfer of the facility in the ordinary course of business and a transfer of the associated VPDES permit are excluded by the Regulation from the definition of “ceases operations”. The Regulation includes the following in the definition of “ceases operations” (as the Regulation acknowledges, there may be other fact patterns which meet the definition):

- a. Bankruptcy or insolvency of the permittee.
- b. Suspension or revocation of a charter or license to operate the facility.
- c. Suspension or revocation of a charter or license to furnish sewer services.
- d. Failure to operate and maintain a facility in accordance with the Operations and Maintenance manual in a manner that creates a substantial or imminent threat to public health or the environment.
- e. Failure to comply with the VPDES permit in a manner that creates a substantial or imminent threat to public health or the environment.
- f. Notice of termination of electric service or other resource essential to the normal operation of the facility.

Regional Office staff are responsible for making the final determination that a facility has ceased operations as defined in the Regulation and for overseeing implementation of the closure plan. Staff from the Division of Enforcement are responsible for providing assistance, upon request from Regional Office staff, in the determination that a facility has ceased operations. Central Office financial assurance staff are responsible for performing ability to pay analyses and for drawing on the financial assurance mechanism to enable Regional Office staff to implement closure plans where facilities have ceased operation.

**Determining That Operations Have Ceased**

Making the determination that a facility has ceased operations, as defined by the Regulation, can be a relatively straightforward matter in some cases. In other cases, it may require a more involved decision making process.

- A. Determinations that do not Involve Case Decisions. Bankruptcy, insolvency, the suspension or revocation of a charter or license and the issuance of a notice of termination of essential services will be cases where the determination of cessation of operations is a straightforward matter.
  1. For cases where a permittee has indicated an inability to continue facility operations because of bankruptcy, Regional Office staff should confirm that the bankruptcy petition has been filed with the bankruptcy court before determining a facility has ceased operations. Division of Enforcement staff are available to assist in securing this information by accessing the bankruptcy court’s electronic document system.
  2. For cases where a permittee has indicated an inability to continue facility operations because of insolvency, Regional Office staff should confirm insolvency by securing from the permittee the information, including information documenting the costs of facility operation, necessary for financial assurance staff to perform an ability to pay analysis. The analysis can then be used to confirm the insolvency claim which then becomes the basis for a determination that the facility has ceased operations.
  3. For cases where a permittee has indicated an inability to continue facility operations because of suspension or revocation of a charter or license needed to operate the facility, Regional Office staff should obtain written confirmation of the suspension or revocation prior to determining that the facility has ceased operations. Confirmation may be obtained from the Department of

Professional and Occupational Regulation (DPOR) for suspensions or revocations of required wastewater operator licenses. DPOR maintains an online database of licenses and disciplinary orders at <http://www.dpor.virginia.gov/licenselookup>. Questions may also be addressed to DPOR at: [WaterWasteOper@dpor.virginia.gov](mailto:WaterWasteOper@dpor.virginia.gov) or by calling DPOR's licensing office at: (804) 367-8595. Suspensions or revocations of other charters or licenses which may be required for facility operation should be confirmed with the entity issuing the charter or license. Other than for cases of suspension or revocation of wastewater operator licenses, Regional Office staff should confirm with Division of Enforcement staff the defensibility of the permittee's claim that the charter or license is needed to operate the facility.

4. For cases where a permittee has indicated an inability to continue facility operations because of suspension or revocation of a charter or license needed to provide sewer services, Regional Office staff should likewise obtain written confirmation of the suspension or revocation prior to determining that the facility has ceased operations. Confirmation may be obtained from the State Corporation Commission (SCC) for suspensions or revocations of required certificates of necessity. The SCC maintains an online database of documents in its cases at: <http://www.scc.virginia.gov/docketsearch#>. Questions may also be addressed to the Office of the Clerk, Document Control Center by calling 804-371-9838 or to the SCC at [scinfo@scc.virginia.gov](mailto:scinfo@scc.virginia.gov). Suspensions or revocations of other charters or licenses which may be required to provide sewer services should be confirmed with the entity issuing the charter or license. Other than for cases of suspension or revocation of required certificates of necessity, Regional Office staff should confirm with Division of Enforcement staff the defensibility of the permittee's claim that the charter or license is needed to provide sewer services.
  5. For cases where termination of electric service is anticipated, Regional Office staff should confirm that a notice of termination has been issued either by obtaining a copy of the notice from the permittee or, if the service provider is amenable, through verbal confirmation of anticipated termination by the service provider, prior to determining that operations have ceased.
  6. For cases where Regional Office staff believe other essential services may be terminated, staff from the Office of Water Compliance should be consulted on the question of whether the service is, in fact, essential to operation of the treatment facility and, if agreed to be essential, what form an appropriate notice of termination would take, prior to making the determination that operations have ceased. An example of such a case might be where a contract operator indicated that it was suspending its service, if it were reasonable to assume that there were no other operators readily available to provide the same service for the facility (making the services of the current contract operator essential), and if the threat of service suspension were documented in writing.
- B. Determinations that do Involve Case Decisions. For cases where the determination of cessation of operations is based upon a failure to operate and maintain a facility in accordance with the Operations and Maintenance Manual or to comply with other provisions of the VPDES permit, a more involved decision making process is necessary as determination of these compliance failures involves a case decision.

Prior to instituting the process to secure a case decision, Regional Office staff must determine that a threat to human health or the environment is resulting or will result from the alleged failure to comply with permit requirements. Although the language of the statute and the Regulation refer to imminent **or** substantial threat, in recognition of the General Assembly's legislative intent, i.e. to address the threat of raw sewage discharges that result from abandonment or abrupt shut-down of sewage treatment facilities, **Departmental staff will proceed with securing case decisions only when the threat to human health or the environment is BOTH imminent and substantial.** For purposes of determining whether the threat is substantial, again, the statute's legislative history would indicate that the threat must rise to the level of an untreated sewage discharge. Examples of substantial threats would be potential or actual discharges of : 1) sludge blankets; 2) total suspended solids at concentration levels and volumes high enough to noticeably coat streambeds; 3) non or poorly disinfected wastewater at bacterial concentration levels and in volumes sufficient to cause in-stream exceedances of water quality criteria for bacteria; 4) wastewater with ammonia concentration levels

and at volumes high enough to cause in-stream exceedances of water quality criteria for ammonia; 5) wastewater with dissolved oxygen (DO) concentration levels low enough and at volumes high enough to cause in-stream levels of DO which do not meet water quality criteria; 6) wastewater with biochemical oxygen demand levels and in volumes high enough to cause documented in-stream algal growth or DO sags below the DO water quality criteria; 7) wastewater discharging from the facility after receiving only primary treatment (e.g. mechanical screening and solids settling); and 8) wholly untreated wastewater discharging from the facility. With respect to determining whether a threat is imminent, Webster's defines the term to mean "ready to take place". Regional staff should consider the following to be instances of an imminent discharge: 1) discharges already occurring that pose substantial threats to human health or the environment; 2) discharges posing substantial threats to human health or the environment that will inevitably occur prior to or by the conclusion of the anticipated informal fact finding proceeding; 3) discharges posing substantial threats to human health or the environment that, given current facility freeboard or holding capacity, anticipated influent flows and, if relevant, precipitation forecasts, are reasonably likely to occur prior to or by the conclusion of the anticipated informal fact finding proceeding; and, 4) discharges posing substantial threats to human health or the environment that, given the current physical condition of the facility, are reasonably likely to occur prior to or by the conclusion of the anticipated informal fact finding proceeding due to catastrophic treatment unit failure.

With respect to case decisions, the Administrative Process Act (APA), §2.2-4000, *et seq.* of the Code of Virginia, states that:

*"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit. See §2.2-4001, Definitions.*

*Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. Such conference-consultation procedures shall include rights of parties to the case to (i) have reasonable notice thereof, which notice shall include contact information consisting of the name, telephone number, and government email address of the person designated by the agency to answer questions or otherwise assist a named party; (ii) appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case; (iii) have notice of any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision; (iv) receive a prompt decision of any application for a license, benefit, or renewal thereof; and (v) be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case. See §2.2-4019, Informal fact finding proceedings.*

*In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is not used or is not empowered to recommend a finding, the Board, commission, or agency personnel responsible for rendering a decision shall render that decision within **90 days from the date of the informal fact-finding, formal proceeding, or completion of a summary case decision proceeding, or from a later date agreed to by the named party and the agency. If the agency does not render a decision within 90 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party.** See §2.2-4021, Timetable for decision, exemptions.*

*The terms of any final agency case decision, as signed by it, shall be served upon the named parties by mail unless service otherwise made is duly acknowledged by them in writing. The signed originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies .... See §2.2-4023, Final Orders.*

*Any ... party aggrieved by and claiming unlawfulness of a case decision ... shall have a right to the direct review thereof by an appropriate and timely court action against the agency or its officers or agents in the manner provided by the Rules of Supreme Court of Virginia. See §2.2-4026, Right, forms, venue; date of adoption or readoption for purposes of appeal.*

The presiding officer makes the case decision about the failure to operate and maintain a facility in accordance with the Operations and Maintenance Manual or to comply with other provisions of the VPDES permit, following an informal fact-finding proceeding. The fact-finding process is described below:

1. Pre-Proceeding Matters.

The notice of the proceeding lays out the basis for the case decision. The notice must be in writing and contain: (1) a recitation of the rights of the permittee found in §2.2-4019 and set forth above; (2) the date and time set for the proceeding and the place where it will be held; (3) the nature of the proceeding (i.e. that the proceeding is being held to determine whether the facility is being operated in accordance with the Operations and Maintenance Manual or the other requirements of the VPDES permit); (4) the basic law under which the agency intends to exercise its authority (i.e. the State Water Control Law); (5) the facts and pertinent permit requirements implicated for each alleged violation; (6) the type of remedy sought (i.e. a case decision regarding whether the permittee failed to comply with the Operations and Maintenance Manual or other VPDES permit requirements); and, (7) a description of any public data, document or information upon which the agency plans to rely in making the case decision. A copy of an appropriate notice letter can be found at the end of this Appendix as Attachment 1.

The notice must be delivered to the permittee by one of the following methods: (1) by certified mail, return receipt requested; (2) by hand-delivery; (3) by express mail; (4) by email with confirmation of delivery; or, (5) by service of process. The APA specifies that “reasonable notice” of the proceeding must be given. Given that for the types of case decisions herein discussed, the alleged failure to comply with permit conditions also involves a condition of imminent and substantial threat to human health or the environment, it is reasonable that the notice be mailed 7 calendar days before the proceeding is to be held or that it be hand-delivered or served 4 calendar days before the hearing is to be held. DEQ and the permittee can also agree to an earlier hearing date to be included in the notice. Regional Office staff are strongly encouraged to contact the permittee by telephone or email as far in advance of the proceeding as possible in order to ensure that the permittee will be available and prepared to participate at the proceeding on the chosen date. If the permittee is unavailable on the chosen date, if circumstances warrant (e.g. the threat to human health or the environment is not ongoing), the proceeding may be delayed for a short time to accommodate the permittee. If the threat to human health or the environment is ongoing or immediately imminent, the permittee should be informed that the proceeding cannot be delayed and that a representative of the permittee should attend the proceeding.

The proceeding should be conducted by a presiding officer (i.e. an agency subordinate) appointed by the Regional Director from among Department staff. The presiding officer should have some knowledge of the VPDES permit program. No one who has been substantively involved with the permittee’s operation of the facility should serve as a

presiding officer or serve in a supervisory role to the presiding officer. Mere knowledge of the case or peripheral involvement would not disqualify an employee from acting in this role.

## 2. Conducting the Proceeding

The proceeding should be conducted in a manner that ensures that both the permittee and the agency representative have a fair and adequate opportunity to present data, views, and argument. A presiding officer checklist, providing suggestions for conducting the proceeding can be found at the end of this Appendix as Attachment 2. The APA does not provide for cross examination of witnesses in informal proceedings. The presiding officer, however, is free to ask any questions necessary to make sure the record is complete and sufficient to support a decision regarding permit violations. The proceeding should be held in the Regional Office. It is recommended that the proceeding be recorded. An accurate record of the proceeding is essential if the case decision is appealed. It is also recommended that Regional Office staff presenting the case for the agency submit a proposed case decision to the presiding officer at the end of proceeding. An agency advocate checklist, providing suggestions for presenting the agency's case, can be found at the end of this Appendix as Attachment 3. The proposed case decision must contain the items described below and, in particular, must document the permit violations which Regional staff have relied on in their determination that the operation of the facility has created an imminent and substantial threat to human health or the environment.

## 3. Post-Proceeding Matters

**As noted above the case may automatically be decided against the agency if the time frames in the APA for making the case decision are not followed.** Again, given that the decision regarding the occurrence of permit violations will involve cases where an imminent and substantial threat to human health or the environment is present, the case decision should be made immediately after the proceeding, well within the statutory 90 day timeframe. In some cases, the permittee may wish to submit proposed findings of fact and conclusions of law, briefs, or other post-proceeding documents. Given the nature of the risk to human health or the environment present in these cases, requests for submission of post-proceedings documents should be denied.

After the proceeding, the presiding officer makes his or her case decision. If the decision is in the favor of the permittee, the case decision need only indicate that fact. An adverse decision, however, must contain: (1) the legal authority for the agency action; (2) a statement that the required notice was provided, a description of the notice and its form of delivery; (3) a recitation of the facts that form the basis for the decision including any statements as to the credibility of witnesses; (4) the conclusion as to what violations have occurred; (5) a statement of when the decision is effective; and (6) a statement of the permittee's right to appeal the case decision pursuant to Virginia Supreme Court Rule 2A:2. An example of an appropriate form of a case decision can be found at the end of this Appendix as Attachment 4.

The following language must be included in any case decision made by the Department:

As provided by Rule 2A:2 of the Rules of the Supreme Court of Virginia, you have 30 days from the date of service of this decision (the date you actually received this decision or the date on which it was mailed to you, whichever occurred first) within which to initiate an appeal of this decision by filing a Notice of Appeal with:

[Name], Director Department of Environmental Quality  
629 East Main Street  
Richmond, Virginia 23219



In the event that this decision is served on you by mail, 3 days are added to that period. Refer to Rule 2A:2 of the Rules of the Supreme Court of Virginia, which describes the required contents of the Notice of Appeal and additional requirements governing appeals from the decisions of administrative agencies.

This language may be included at the end of the case decision or in the cover letter to the case decision.

4. **Service of the Case Decision.** In cases of decisions adverse to the permittee, and because of the imminent and substantial threat to human health or the environment caused by the operation of the facility, the presiding officer must finalize his or her case decision and serve a copy of it while the permittee is still present in the Regional Office for the proceeding. A written acknowledgement of receipt of the decision must be secured from the permittee. If the permittee is not present at the hearing the decision should be hand delivered and written receipt of delivery secured or the decision should be mailed via certified mail, return receipt requested. The signed original of the case decision remains in the custody of the Regional Office staff together with all exhibits or other documents presented at the proceeding and the audio recording of the proceeding.

#### **Implementation of the Closure Plan After Determining that Operations Have Ceased**

After a determination that normal operation of the facility has ceased, Regional Office staff proceed to ensure implementation of the closure plan for the facility. Immediately following receipt by the permittee of the determination, Central Office financial assurance staff should be contacted with a request to draw on the permittee's financial assurance mechanism to enable implementation of the closure plan to proceed. Central Office financial assurance staff should instruct Central Office accounting staff to place the monies drawn into an account where it can be earmarked for facility closure operations. Regional Office staff then use the monies in that account to pay plan implementation costs (e.g. costs of facility closure, cost of facility connection, costs of facility operation).

The Regulation requires that closure plans designate and authorize a named third party to implement the plan. Any plan submitted, other than those that provide for continued operation of the facility by local government or by a contractor, must include a named third party that, upon notification by DEQ, will implement the plan. Regional Office staff should therefore notify, as applicable, the third party named in the closure plan, the local government that agreed to take over operation of the facility or the contract operator that has accepted responsibility for operation of the facility, that the agency has determined that the permittee has ceased operation of the facility and that responsibility for closure and/or operation of the facility has passed to them (including the responsibility for signing and submitting Discharge Monitoring or other reports required by the Permit). It is highly recommended that Regional Office staff contact the third party or contract operator even earlier, as soon as staff are aware that the permittee may be ceasing operations, in order to confirm that they are able to assume their plan responsibilities. If that is not the case, Regional Office staff should, using DEQ contracting procedures as a guide, upon determining that facility operations have ceased, secure the services of another third party or contractor to implement the plan.

If the closure plan involves operation of the facility for a two year term, without provision for alternate sewer service and the facility is currently serving individual homeowners (vs. lessees), Regional Office staff should attempt to notify the homeowners of the period that contract operations will continue under the closure plan and, should circumstances warrant, offer to facilitate a discussion with local government representatives, local or state health department staff, DPOR staff and SCC staff, about the options for installation of onsite sewer systems, connection to central sewer service, the appointment of a receiver to run the permittee's sewer service business in accordance with §§56-265.10 or 56-265.13:1 of the Code of Virginia, or the operation of the facility by the homeowners under §56-265.1 or other applicable provisions of the Code relating to small sewer service utilities.

**Attachment 1**  
**Notice of Informal Proceeding**

[Date]

[Contact Name, if Applicable]  
[Permittee Name]  
[Permittee Address]

**Delivery Confirmation**

**NOTICE OF INFORMAL PROCEEDING**

**DATE:** [Date]  
**TIME:** [Time]  
**PLACE:** Virginia Department of Environmental Quality  
[Name of Regional Office]  
[Regional Office address]

In re: [Permittee Name, Facility Name, Violations of VPDES Permit No.xxx]

Dear [Permittee]

You are hereby notified that, pursuant to Virginia Code (the "Code") §2.2-4019, an informal proceeding will be held on [Date] at [Time] at the Virginia Department of Environmental Quality (Department or DEQ) [Name of Regional Office] regarding the [Facility Name] (or "the Facility") located at [Address of Facility].

**PURPOSE**

The purpose of the proceeding is to determine whether [use "you" if the permittee is an individual, otherwise use the name of the business entity] [use "have" if speaking of an individual and "has" if speaking of a business entity] violated certain provisions of [insert VPDES Permit No.]. The Department has previously determined that these violations, if found to have occurred, are of a nature to create a substantial and imminent threat to human health or the environment. The provisions of the Financial Assurance Regulation at 9VAC25-650-140 allow the Department to draw on the financial assurance mechanism for the facility in order to implement the facility closure plan when [use "you" if the permittee is an individual, otherwise use the name of the business entity] [use "have" if speaking of an individual and "has" if speaking of a business entity] violated the provisions of [insert VPDES Permit No.] in a manner that creates a substantial and imminent threat to human health or the environment. *See also*, 9VAC25-650-10. The alleged violations are set forth in this notice letter.

**INFORMATION TO BE USED BY DEQ**

This letter notifies you of information upon which DEQ staff may rely to request a case decision regarding the alleged violations of VPDES Permit No. [insert permit number]. In addition to the information enclosed with this notice letter and labeled as "DEQ Exhibit Book," DEQ staff may also rely on other documents in DEQ files. The files contain public documents and are available for your inspection at the DEQ [Name of Regional Office]. The enclosed information,

the information in DEQ's case file and the information presented by witnesses will be relied upon to ascertain the facts in this matter.

DEQ staff will also rely on applicable statutes, regulations, and DEQ guidance. In addition to the laws and regulations cited in this notice letter, DEQ may rely on other authorities. Full texts of statutes, regulations, and DEQ guidance can be obtained at <http://www.deq.virginia.gov/LawsRegulations.aspx> or <http://lis.virginia.gov/> (statutes and regulations) and <http://townhall.virginia.gov/L/GDocs.cfm> (DEQ guidance).

### **ALLEGED VIOLATIONS AND LEGAL REQUIREMENTS**

**[INSERT VIOLATIONS AND LEGAL REQUIREMENTS, USING THE FORMAT FOUND IN THE MODEL WATER DMR NOV, OF CHAPTER 2A OF THE ENFORCEMENT MANUAL, <http://www.deq.virginia.gov/Programs/Enforcement/Laws.Regulations.Guidance.aspx>, AS GUIDANCE. REMEMBER THE VIOLATIONS MUST BE OF A NATURE THAT RESULT IN A THREAT TO HUMAN HEALTH AND THE ENVIRONMENT THAT IS BOTH IMMEDIATE AND SUBSTANTIAL. SEE APPENDIX C, *Determining That Operations Have Ceased*, SECTION B FOR EXAMPLES OF IMMEDIATE AND SUBSTANTIAL THREATS WHICH WARRANT A CONCLUSION THAT OPERATIONS AT THE FACILITY HAVE CEASED.]**

### **REMEDY SOUGHT**

DEQ staff will request a case decision regarding whether **[use "you" if the permittee is an individual, otherwise use the name of the business entity]** **[use "have" if speaking of an individual and "has" if speaking of a business entity]** violated the provisions of VPDES Permit No. **[insert permit number]**. Specifically, DEQ staff will request a case decision indicating that you have violated:

**[LIST AND BRIEFLY DESCRIBE THE PERMIT PROVISIONS ALLEGED TO HAVE BEEN VIOLATED.]**

### **PROCEDURES**

**[Use "you" if the permittee is an individual, otherwise use the name of the business entity]** may appear in person or by counsel or other qualified representative pursuant to Va. Code §2.2-4019. At this proceeding, **[use "you" if the permittee is an individual, otherwise use the name of the business entity]** will be able to present factual data, argument, or proof in connection with this case. DEQ staff may rely on the enclosed documents, other documents in its files, and statements of DEQ staff to substantiate the alleged violations. A presiding officer will hear the evidence in this case and issue a case decision.

**Be advised that if [use "you" if the permittee is an individual, otherwise use the name of the business entity] [use "fail" if speaking of an individual or "fails" if speaking of a business entity] to attend or appear at the informal fact-finding proceeding, the presiding officer may issue a default decision regarding the subject of this notice.** The presiding officer may determine all issues in the adjudication, including those affecting **[use "you" if the permittee is an individual, otherwise use the name of the business entity]**. Further, a decision may be issued against **[use "your" if the permittee is an individual, otherwise use possessive form of the name of the business entity]** interests based on any admissions or other evidence without notice to **[use "you" if the permittee is an individual, otherwise use the name of the business entity]**.

**[Use "you" if the permittee is an individual, otherwise use the name of the business entity]** will be notified of the results of the proceeding in accordance with Va. Code §2.2-4019 and have the right to appeal any adverse decision in accordance with Va. Code §2.2-4026.

**[Insert name of DEQ staff member acting as agency advocate]** will represent DEQ at this hearing. Please contact **[name of agency advocate]** at **[Phone Number]** or **[Email Address]** immediately upon receipt of this letter to indicate whether **[use “you” if the permittee is an individual, otherwise use the name of the business entity]** will be represented at this proceeding by counsel or another representative or if you have any questions regarding this matter.

Sincerely,

**[Name]**  
**[Title]**

Attachment

cc: **[Presiding Officer]**  
**[Regional Division Director]**  
**[Regional Compliance Manager]**  
**[Regional Enforcement Manager]**  
**[Agency Advocate]**

**Attachment 2**  
**Presiding Officer Checklist**

1. Check to be sure the recording equipment is working. It is not necessarily your obligation to bring the equipment but it is prudent to check with the agency advocate to be sure that the equipment will be available in the room.
2. Do not feel obligated to wait for more than a short time (e.g. 15 minutes) for a tardy permittee; unless there has been advance notification the permittee will be late to the proceeding.
3. When the proceeding starts introduce yourself and indicate the office or division for which you work.
4. State affirmatively that you are generally familiar with the provisions of the VPDES permit program but that you have had no direct involvement in the case at hand (it is agency policy for informal proceedings that the hearing officer have no direct involvement in the case).
5. Set the ground rules:
  - a. All phones need to be turned off or silenced.
  - b. If a party needs a break to use the facilities or to confer with counsel, the party should let the presiding officer know.
  - c. There will be no cross examination. All statements, questions or comments should be addressed to the presiding officer not to the other party. The presiding officer will then present any questions to the opposing party for response.
  - d. Indicate that the proceedings are being recorded.
  - e. Ask if the permittee or agency advocate have any other procedural issues to address.
6. Have the participants (including consultants, counsel or witnesses) introduce themselves for the record.
7. Confirm that the permittee received notice of the proceeding.
8. Confirm that the notice was either mailed seven days before the proceeding or hand-delivered or served four days before the proceeding.
9. Review the notice to ensure that it contains the required information, i.e. that:
  - a. The permittee could be represented by counsel or other qualified representative.
  - b. That the permittee would be allowed to present factual data, argument or proof at the proceeding.
  - c. That the permittee was notified of any information the agency would rely on to make an adverse decision.
  - d. That the permittee would be entitled to a prompt decision.
  - e. That the permittee would be informed in writing of the basis for an adverse decision.
10. Confirm that the permittee received a copy of the Exhibit Book.
11. State the purpose of the proceeding (i.e. to determine if certain conditions of the VPDES permit have been violated.)
12. State that only information relevant to the determination of whether the VPDES permit has been violated is to be presented.
13. Indicate that the agency advocate will first present the Department's evidence that a violation has occurred and that subsequently the permittee may present its evidence that no such violation exists.
14. Proceed to hear the parties' presentations. If either party references a document as evidence, ensure that the document is presented for entering into the record.
15. Ask questions for clarification during or after the presentation of evidence, if necessary.
16. Given the circumstances under which the proceeding is being held (i.e. to ascertain whether certain permit violations, which staff have determined are of a nature to cause imminent and substantial threat to human health or the environment, exist), it is important that a case decision regarding the alleged violations be made immediately after the end of the informal proceeding. To this end the presiding officer may wish to prepare a draft decision prior to the proceeding, which can be revised and finalized immediately after the proceeding. Or, if prepared by the agency advocate and acceptable to the presiding officer, the officer may wish to adopt the advocate's proposed case decision. **It is important to remember that the Administrative Process Act requires that the decision be reduced to writing and be served on the permittee.** Service will be easier to accomplish if the written decision is provided on the day of the proceeding.

**Agency Advocate Checklist**

1. Remember to bring the relevant exhibits to the proceeding, i.e.:
  - a. A copy of the VPDES permit.
  - b. A copy of the Operations and Maintenance Manual for the facility if the alleged violation involves a failure to comply with Manual requirements.
  - c. Any inspection reports, including photographs, that document the permit violations. Photographs should be numbered to coincide with the inspection observations.
  - d. Any compliance letters or notices from the agency to the permittee regarding the permit violations (e.g. NOVs, warning letters, deficiency letter, letters of agreement.)
  - e. Any Discharge Monitoring Reports or other required reports that document the permit violations.
  - f. Any documents generated by the permittee (or on its behalf,) or the agency, containing information regarding the permit violations.
  - g. A copy of the notice of the informal proceeding.
  - h. A copy of the proposed case decision.

The above documents should have been numbered and chronologically placed in Exhibit Books mailed or otherwise delivered to the permittee and the presiding officer. The permittee should receive its Exhibit Book contemporaneously with the notice of the informal proceeding. The presiding officer should be provided his or her Exhibit Book at the same time as the permittee. The agency advocate should bring a copy of the Exhibit Book to the informal proceeding to offer into evidence, as part of the administrative record. The advocate may wish to bring additional copies of the Exhibit Book to the proceeding in the event that the presiding officer or the permittee have neglected to bring their copies with them.

2. The presiding officer will initiate the proceeding. After establishing the ground rules, asking the parties to introduce themselves and confirming that proper notice of the proceeding has been given, he or she will ask the agency advocate to present the case for the agency. **The case to be presented is that the permit requires the named party, i.e. the permittee, to comply with certain conditions in the operation of the facility which, as shown by the evidence presented by the advocate, have not been met.** The permittee is strictly liable for compliance with permit conditions therefore the advocate's main case elements are to show that the party named in the notice of the proceeding is the party named as the permittee in the VPDES permit, to show that the permit is still in effect and to show that certain conditions of the permit have not been met. Note: If the permittee is a business entity, confirmation that the business is appropriately formulated and registered to do business in Virginia should be obtained, prior to the proceeding, by confirming that the entity is listed in the SCC corporate database at: [https://cisiweb.scc.virginia.gov/z\\_container.aspx](https://cisiweb.scc.virginia.gov/z_container.aspx). Assistance with questions of business validity is available, upon request, from the Department's Division of Enforcement.

- a. The Opening Statement

The advocate should begin his or her opening statement by restating his or her name and position with the agency. The advocate should also state that he or she is presenting the case on behalf of the agency and should then provide a brief synopsis of the VPDES permit program, how it operates (e.g. through the issuance of permits which regulate surface water point source discharges), what its goals are (e.g. to protect water quality through the insertion of conditions in permits which are designed to ensure that water quality is not impaired by the point source discharge) and what the likely effect is of noncompliance with permit conditions (e.g. adverse impacts to water quality, human health and the environment). The advocate should also restate the purpose of the proceeding (i.e. to determine whether certain violations of the VPDES permit exist). **NOTE: The violations must be of a nature that present an imminent and substantial threat to human health or the environment. See Appendix C, *Determining That Operations Have Ceased*, Section B for examples of imminent and substantial threats which must be found by the presiding officer in order to warrant a conclusion that operations at the Facility have ceased**

b. Arguing the Case

- i. The advocate should proceed to present for the record and describe each document in the Exhibit Book and any supplemental documents that he or she has brought to the proceeding, or identify any witness that is present to demonstrate that the appropriate party has been notified of the proceeding, that the permit is still in effect and that the violations of the permit outlined in the notice of the proceeding, have occurred.
- ii. The advocate should specify (as applicable) which permit violations are evidenced by or admitted to in each document and reference the legal requirement violated (e.g. a Discharge Monitoring Report may evidence violations of Part I.A. of the Permit, which contains limitations on the amount certain pollutants which may be discharged). If a witness is to testify, then he or she should be asked by the advocate to describe his or her observations that relate to the permit violations alleged and to describe the associated legal requirement.
- iii. If there are inspection reports to be presented, the advocate should summarize the observations and legal requirements from the inspection, state (if applicable) that there are copies of photographs attached to the reports that document the observations, and summarize the corrective action requested.
- iv. If there are Discharge Monitoring Reports or other documents, such as 5 day letters, in which the permittee certifies or admits to violations evidenced by the document, that fact should be noted at the time of presenting the document.
- v. The advocate should confirm, for the record, that the permit indicates that the permittee and the party named in the notice of proceeding are one and the same and offer the permit and the proceeding notice as evidence of the fact.
- vi. The advocate should also confirm, for the record, that the permit is still effective by noting the permit term given on page one of the permit and state that the permit is being offered as evidence that fact as well.
- vii. It is advisable to present documents in the order in which they appear in the Exhibit Book.
- viii. All documents should be affirmatively offered to the presiding officer for inclusion in the hearing record. The Exhibit Book, as a compendium of documents, may be offered as a whole for entry into the record.
- ix. At the end of the presentation the advocate should ask the presiding officer to accept all of the documents presented into the record and should request that the presiding officer find that the permittee has violated the specified conditions of the permit.

c. Permittee Presentation

The permittee will present its case after the advocate has finished presenting the agency's case.

d. Presiding Officer Asks Questions

After both parties have finished their presentations, the presiding officer may ask clarifying questions either on behalf of either party or for the record.

e. The Closing Statement

The parties will be allowed to make closing statements after the presiding officer has finished eliciting evidence. The agency advocate should be the first to present a closing statement. The closing statement should affirmatively declare that the agency has presented evidence that proves the permittee has violated certain conditions of the VPDES permit. The violations should be specified, together with a citation to the permit condition violated. The advocate should repeat his or her request that the presiding officer find that the permittee has violated the specified permit conditions. The advocate should offer the draft case decision indicating such a finding to the presiding officer at this time.





**Attachment 4**  
**Form of Case Decision**

**[LETTERHEAD]**

**DECISION AND NOTICE OF DETERMINATION OF CESSATION OF OPERATIONS**

Date: \_\_\_\_\_

Certified Mail # \_\_\_\_\_

VPDES Permit No. \_\_\_\_\_

Permittee Name: \_\_\_\_\_

Permittee Address: \_\_\_\_\_

Facility Name and Address: \_\_\_\_\_

On **[date of proceeding]**, the State Water Control Board (Board), acting through the Virginia Department of Environmental Quality (DEQ), held an informal fact finding proceeding (IFF) to review information documented in its files, and presented at the proceeding, regarding operation of the Facility. The proceeding was held to determine whether there has been a *cessation of operations* at the Facility, as that term is defined by § 62.1-44.18:3.A of the Code of Virginia. I, **[name of presiding officer]**, have been appointed to make this determination.

Having heard testimony and reviewed the documentary evidence presented at the proceeding, **I find that the facts outlined below, as proven by the evidence presented, support a determination that normal operation of the Facility has ceased under circumstances where it would not be reasonable to expect such operation to be resumed by [insert permittee name here].**

Findings of Fact:

**[In this space the presiding officer should list the facts that demonstrate that operations have ceased, i.e.:**

- **the facts demonstrating the permittee’s failure to comply with the operation and maintenance requirements of the VPDES permit, or**
- **the facts demonstrating the permittee’s failure to comply with other provisions of the VPDES permit, AND**

**the facts demonstrating an imminent AND substantial threat to public health or the environment was caused by the compliance failures. {Note: For purposes of determining whether a threat is substantial, legislative history would indicate that the threat must rise to the level of an untreated sewage discharge. For purposes of determining whether a threat is imminent, Webster’s defines the term to mean “ready to take place”. See Appendix C, *Determining That Operations Have Ceased*, Section B for examples of the types of imminent and substantial threats which must be found by the presiding officer in order to warrant a conclusion that operations at the Facility have ceased.}}**

You are hereby notified of the Board’s determination in this matter and that DEQ intends immediately, as a result of such determination, to draw on the financial assurance mechanism associated with the Facility in order to initiate implementation of the Facility’s Closure Plan.

For each violation described herein, DEQ reserves the right to issue enforcement actions, seek civil charges and to seek compliance with its rules and regulations in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such civil charges and compliance.

Time for Filing a Notice of Appeal

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal in accordance with the Rules of the Supreme Court of Virginia with the Director of the Department of Environmental Quality at 629 East Main Street, Richmond, Virginia 23219. In the event that this decision is served on you by mail, three days are added to that period. This Notice of Appeal does not constitute an appeal to the Director, rather it provides the legally required notice to the agency secretary that you intend to file an appeal in court. The Administrative Process Act and the Rules of the Supreme Court of Virginia contain other requirements that apply to such a judicial appeal.

\_\_\_\_\_  
[Presiding Officer Signature]

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Email Address]

\_\_\_\_\_  
[Phone Number]

**If hand delivered:**

\_\_\_\_\_  
Permittee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Permittee Printed Name

Appendix D

Department of Environmental Quality  
Virginia Pollutant Discharge Elimination System  
Change of Ownership Agreement Form

RE: Change of Ownership - VPDES Permit No. \_\_\_\_\_

Name of permitted facility: \_\_\_\_\_

\_\_\_\_\_ County

TO: Virginia Department of Environmental Quality  
**Regional Office and Address**

: \_\_\_\_\_  
: \_\_\_\_\_  
: \_\_\_\_\_

We, the undersigned, hereby request a transfer of ownership for the referenced permit.

Anticipated date of transfer: \_\_\_\_\_

**CURRENT OWNER SHOWN ON PERMIT:** I (We) hereby agree to the transfer of ownership modification to the referenced VPDES Permit.

Attach verification that all current owner outstanding Annual Fee payments are up to date (YES/NO). If NO, see Annual Fee payment agreement under NEW OWNER below.

Current Owner name as listed on the VPDES Permit Cover Page:

\_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

-----

**NEW OWNER TO ASSUME PERMIT:** I (We) hereby agree to the change of ownership modification to the referenced VPDES Permit, and agree to accept all conditions and responsibilities of the permit.

NEW OWNER agrees to pay all outstanding Annual Fee payments currently due by old owner YES/NO

Transferred permit to be issued to: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

**Financial Assurance/Closure Requirements**

Is this transferred VPDES permit for a privately owned sewerage system to treat sewage generated by private permanent residences discharging more than 1,000 gallons per day and less than 40,000 gallons per day? (YES/NO) NOTE: The term "privately owned" does not apply to hotels, motels, seasonal camps and industrial facilities that do not serve as permanent residences.

If YES

This form must be sent to the appropriate regional DEQ office by electronic or U.S. Postal CERTIFIED MAIL.

In addition, the Financial Assurance Regulation, [9VAC25-650](#) applies to all privately owned sewerage systems that treat sewage generated by private residences and discharge more than 1,000 gallons per day and less than 40,000 gallons per day. A private residence is defined as any building, buildings or part of a building owned by a private entity which serves as a permanent residence where sewage is generated. The Regulation requires that a closure plan, a cost estimate and a financial assurance mechanism be in place. If this applies to the NEW OWNER, you have SIX MONTHS from your signature on this form to demonstrate compliance with 9VAC25-650. Ownership transfers where a discharge has already commenced cannot be processed until the closure plan, cost estimate and an approved financial assurance mechanism are in place.

*[You may add the following consent for electronic transmittal of the permit if not already obtained.]*

The Department of Environmental Quality (DEQ) may deliver permits and certifications (this includes permit issuances, reissuances, modifications, revocation and reissuances, terminations and denials) to recipients, including applicants or permittees, by electronically certified mail where the recipients notify DEQ of their consent to receive mail electronically (§ 10.1-1183). Check *only one* of the following to consent to or decline receipt of electronic mail from DEQ as follows:

Applicant or permittee agrees to receive by electronic mail the permit that may be issued for the proposed pollutant management activity, and to certify receipt of such electronic mail when requested by the DEQ.

If yes, provide email: \_\_\_\_\_

Applicant or permittee declines to receive by electronic mail the permit that may be issued for the proposed pollutant management activity.

**This form must be signed by properly authorized individuals as specified in the VPDES Permit Regulation ([9VAC25-31-110](#)) and will not be processed until all fees are paid.**

Appendix E

**VPDES Permit Application Addendum**

1. **Entity to whom the permit is to be issued:** \_\_\_\_\_

*Who will be legally responsible for the wastewater treatment facilities and compliance with the permit? This may or may not be the facility or property owner.*

2. **Is this facility located within city or town boundaries?** Yes  No

3. **Provide the tax map parcel number for the land where the discharge is located.** \_\_\_\_\_

4. **For the facility to be covered by this permit, how many acres will be disturbed during the next five years due to new construction activities?** \_\_\_\_\_

5. **What is the design average effluent flow of this facility?** \_\_\_\_\_ MGD

**For industrial facilities, provide the max. 30-day average production level, include units:**

\_\_\_\_\_

**In addition to the design flow or production level, should the permit be written with limits for any other discharge flow tiers or production levels?** Yes  No

If "Yes", please identify the other flow tiers (in MGD) or production levels:

\_\_\_\_\_

*Please consider the following questions for both the flow tiers and the production levels (if applicable): Do you plan to expand operations during the next five years? Is your facility's design flow considerably greater than your current flow?*

6. **Nature of operations generating wastewater:**

\_\_\_\_\_ % of flow from domestic connections/sources

Number of private residences to be served by the treatment \_\_\_\_\_

\_\_\_\_\_ % of flow from non-domestic connections/sources

7. **Mode of discharge:**  Continuous  Intermittent  Seasonal

Describe frequency and duration of intermittent or seasonal discharges:

\_\_\_\_\_

8. **Identify the characteristics of the receiving stream at the point just above the facility's**

**discharge point:**

- Permanent stream, never dry
  - Intermittent stream, usually flowing, sometimes dry
  - Ephemeral stream, wet-weather flow, often dry
  - Effluent-dependent stream, usually or always dry without effluent
  - Lake or pond at or below the discharge point
  - Other: \_\_\_\_\_
- 

**9. Approval Date(s):**

**O & M Manual** \_\_\_\_\_ **Sludge/Solids Management Plan** \_\_\_\_\_

Have there been any changes in your operations or procedures since the above approval dates? Yes   
No

**10. Privately Owned Treatment Works**

If this application is for a privately owned treatment works serving, or designed to serve, 50 or more residences, you must include with your application notification from the State Corporation Commission that you are incorporated in the Commonwealth and verification from the SCC that you are in compliance with all regulations and relevant orders of the State Corporation Commission. Incorporated also includes Limited Liability Companies (LLCs), Limited Partnerships (LPs) and certificates of authority.

**11. Consent to receive electronic mail**

The Department of Environmental Quality (DEQ) may deliver permits and certifications (this includes permit issuances, reissuances, modifications, revocation and reissuances, terminations and denials) to recipients, including applicants or permittees, by electronically certified mail where the recipients notify DEQ of their consent to receive mail electronically (§ 10.1-1183). Check *only one* of the following to consent to or decline receipt of electronic mail from DEQ as follows:

Applicant or permittee agrees to receive by electronic mail the permit that may be issued for the proposed pollutant management activity, and to certify receipt of such electronic mail when requested by the DEQ.

If yes, provide email: \_\_\_\_\_

Applicant or permittee declines to receive by electronic mail the permit that may be issued for the proposed pollutant management activity.

## 12. Financial Assurance/Closure

The Financial Assurance Regulation, [9VAC25-650](#) applies to all privately owned sewerage systems that treat sewage generated by private residences and discharge more than 1,000 gallons per day and less than 40,000 gallons per day. A private residence is defined as any building, buildings or part of a building owned by a private entity which serves as a permanent residence where sewage is generated. It does not apply to hotels, motels, seasonal camps and industrial facilities that do not serve as permanent residences. The regulation requires that a closure plan, a cost estimate and a financial assurance mechanism be in place. If financial assurance/cost estimate/closure plan requirement is applicable to this facility please review the following:

### **For reissuances (existing facilities):**

The Financial Assurance Regulation [9VAC25-650](#) also requires that the permittee review the closure plan and cost estimate at the end of the VPDES permit term and that the permittee submit the plan, the cost estimate and a written summary of their review, and of any modifications to the plan, concurrently with this application for permit reissuance. If the permittee's review of the closure plan and cost estimate result in changes to the cost estimate greater than that which would result from the required annual inflationary adjustment per the permit's special condition and [9VAC25-650-30 B](#), the resulting increase to the existing financial assurance mechanism should be made.

Review and update if necessary, the closure plan, cost estimate and financial assurance mechanism per the last annual inflationary adjustment or today if changed from last annual inflationary adjustment. Send to the DEQ Office of Financial Responsibility at the address below via tracked mail.

### **For issuances (new facilities or facilities not built):**

Include the closure plan, cost estimate and financial assurance mechanism with this application to the following address via UPS, FEDEX or USPS tracked mail:

Department of Environmental Quality  
Office of Financial Responsibility and Waste Programs  
P.O. Box 1105  
Richmond, VA 23218

You may use the attached suggested wording for closure plan permanent facility closure, 24 month contract operation and closure plan third party implementation agreement. Also include the signed application for closure plan approval. Questions about these financial assurance and closure requirements may be directed to Suzanne Taylor at (804) 698-4146.



## Closure Plan #1 (Permanent Facility Closure)

VPDES Permit#: (#) (facility name)

Closure Plan Contractor: (full name and address and telephone number)

Third Party Implementer: (full name and address and telephone number)

This closure plan consists of the cessation of the discharge of pollutants to state waters, followed by physical closure of the above referenced facility in accordance with the facility closure plan prepared in accordance with [9VAC25-790-120](#) E 3 and approved by the department.

The undersigned Closure Plan Contractor hereby agrees to stand by for the duration of the current VPDES permit term (provide dates) to perform physical closure of the privately owned sewerage system located at (facility name) in accordance with the technical outline provided below. The Closure Plan Contractor shall act under the direction of the undersigned Third Party Implementer. The Closure Plan Contractor further agrees to perform the designated work in accordance with the physical closure cost estimate attached to this agreement.

The cessation of the discharge of pollutants to State waters shall be effected through the termination of all residencies connected to the facility. The process of residential termination shall be administered by the Third Party Implementer. In the interim, the Third Party Implementer shall also administer the operation of the facility for up to 24 months by a (licensed) contract operator as designated in a separate agreement attached to the closure plan. Upon completion of residential termination, the Third Party Implementer shall instruct the Closure Plan Contractor to carry out physical closure of the facility according to the following (or included by attachment) technical outline . . . .

Authorized Signature for Third Party Implementer: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized Signature for Closure Plan Contractor: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

## Closure Plan #4 (24 Month Contract Operation)

VPDES Permit#: (#) (facility name)

Facility Contract Operator: (full name and address and telephone number)

Third Party Implementer: (full name and address and telephone number)

This closure plan stipulates contract operation of the facility for a period of up to 24 months after initial implementation of the closure plan, regardless of the date of initial implementation. Contract operation shall be by the undersigned Facility Contract Operator.

The Facility Contract Operator hereby agrees to stand by for the duration of the current VPDES permit term (provide dates) to perform contract operation of the privately owned sewerage system located at (facility name) for a period of up to 24 months. The Facility Contract Operator hereby stipulates that (he/she) possesses all licenses and/or qualifications necessary or required to operate the facility in question.

Upon implementation of the closure plan and at the direction of the undersigned Third Party Implementer, the Facility Contract Operator shall operate the facility for up to 24 months in accordance with the terms and conditions of the applicable VPDES permit for the facility. The Facility Contract Operator stipulates that the current permit holder and the person or legal entity contracted to standby to operate the facility (i.e. the Facility Contract Operator) under the closure plan are not the same person or legal entity. The Facility Contract Operator further stipulates that the following cost estimate in the amount of (\$) is sufficient to pay for comprehensive operation of the facility for up to 24 months in conjunction with all of the previously discussed requirements. Upon assuming the duties at the abandoned sewerage treatment plant, the Facility Contract Operator will be paid for his/her operating services from the available funds in the financial assurance mechanism on file with the Virginia Department of Environmental Quality for this permit.

Authorized Signature for Third Party Implementer: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized Signature for Closure Plan Contractor: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Closure Plan Third Party Implementation Agreement

Date:

VPDES Permit#:

Permit Holder: (full name and address and telephone number)

Third Party Implementer: (full name and address and telephone number)

Terms: The undersigned Permit Holder hereby engages the undersigned Third Party Implementer to stand by for the duration of the current VPDES permit term (provide dates) to implement and administer all components of the attached closure plan in accordance with its requirements in the event that the State Water Control Board determines that the facility has ceased operation.

Authorized Signature for Third Party Implementer: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized Signature for VPDES Permit Holder: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

Appendix E  
Form 1

**Virginia Department of Environmental Quality  
APPLICATION for CLOSURE PLAN APPROVAL  
For Municipal / Domestic Sewage Treatment Systems  
Subject to the Financial Assurance Regulation (9VAC25-650)**

<b>PERMITTEE INFORMATION</b>	<b>PROJECT CONSULTANT, CONTRACTOR OR ENGINEER INFORMATION</b>
Facility Name:	Company or Business Name:
VPDES Permit No.	
Owner Name:	Name:
Title:	Title:
Address:	Address:
Phone:	Phone:
Email:	Email:

**The complete Closure Plan is attached.**

.....  
 .....  
 The following must be signed by a person described in [9VAC25-31-110.A](#) or by a duly authorized representative of that person:

***“The Closure Plan adheres to the general criteria and minimum standards of the Sewage Collection and Treatment Regulations (9 VAC 25-790-120 E 3\*), meets the requirements specified in the VPDES permit, and provides adequate guidance for the treatment facility closure. (DEQ will be notified prior to commencing the facility closure and upon completion of all necessary work. The property deed will be amended to address the presence of any remaining waste treatment structures and stabilized and/or inert waste residuals.”***

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.

<i>Name</i>	<i>Title</i>	<i>Signature</i>	<i>Date</i>
-------------	--------------	------------------	-------------

.....  
 .....  
 For DEQ use only:

The Closure Plan for the permitted facility referenced above is approved. In the interim prior to closure of the facility, the DEQ approval does not relieve you of your responsibility to:

1. operate the facility in a manner to consistently meet the facility's performance requirements,
2. correct design and/or operation deficiencies, or
3. comply with all other applicable laws and regulations.

Please contact the DEQ Regional Office if you have any questions.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

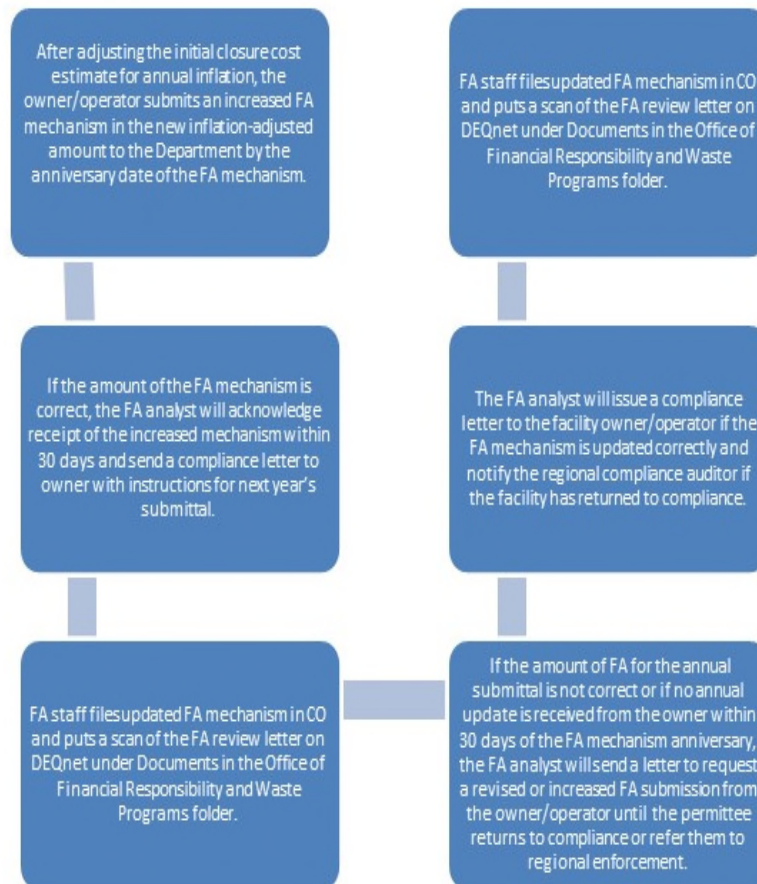
\_\_\_\_\_  
Date

*Department of Environmental Quality Authorized Representative*

# Current Workflow for VPDES Financial Assurance for Initial Permit Application (no CEDS and ECM)



# Current Workflow for VPDES Financial Assurance Annual Submittal, Years 2-5 (no CEDS or ECM)





# Current Workflow for VPDES Financial Assurance for Permit Reissuance (no CEDS or ECM)



Appendix G

Virginia Department of Environmental Quality  
 COMPLETION OF CLOSURE ACTIVITY CERTIFICATION  
 For Municipal/Domestic Sewage Treatment Systems  
 Subject to the Financial Assurance Regulation (9VAC25-650)

PERMITTEE INFORMATION	PROJECT CONSULTANT, CONTRACTOR OR ENGINEER INFORMATION
Facility Name:	Company or Business Name:
VPDES Permit No.:	
Owner Name:	Name:
Title:	Title:
Address:	Address:
Phone:	Phone:
Email:	Email:

The Closure Plan approval is attached.

.....

*The following must be signed by a person described in [9VAC25-31-110.A](#) or by a duly authorized representative of that person:*

*“Closure of the treatment facility has been completed in accordance with the approved Closure Plan.”  
 The property deed has been amended to address the presence of any remaining waste treatment structures and stabilized and/or inert waste residuals.”*

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.

\_\_\_\_\_  
*Name Title Signature Date*